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## NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 21st November, 1959 :—

Issue No.	No. and date	Issued by	Subject
162	S. O. 2539 and 2540, dated 14th November, 1959.	Ministry of Information and Broadcasting.	Approval of films specified therein.
163	S. O. 2541, dated 16th November, 1959.	Ministry of Commerce and Industry.	Appointing a body of persons for making a full investigation into the circumstances of M/s. Mahaboob Shahi (Gulbarga) Mills Co. Ltd., Gulbarga.
164	S. O. 2542, dated 16th November, 1959.	Ministry of Steel Mines and Fuel.	Fixation of prices at which coal/coke overloaded at any weigh-bridge may be sold by colliery owners.
	S. O. 2543, dated 16th November, 1959.	Do.	Fixation of prices at which coal/coke may be sold by colliery owners.

Issue No.	No. and date	Issued by	Subject
165	S. O. 2593, dated November, 1959.	18th Ministry of Commerce and Industry.	Appointment of a body of persons for the purpose of making a complete investigation into the circumstances of M/s. Osmanshabhi Mills Limited, Nanded.
166	S. O. 2594, dated November, 1959	21st Ministry of Labour and Employment.	Constitution of a National Industrial Tribunal at Bombay and appointment of Shri Salim M. Merchant as its presiding officer.
	S. O. 2595, dated November, 1959.	21st Ministry of Labour and Employment.	Referring the dispute between the employers, of Press Trust of India, Bombay and its workmen to the National Industrial Tribunal (S.O. 2594).

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

### **PART II—Section 3—Sub-section (ii)**

**Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).**

### **ELECTION COMMISSION, INDIA**

*New Delhi, the 18th November 1959*

**S.O. 2604.**—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order pronounced on the 29th September, 1959, by the Election Tribunal, Parbhani.

## BEFORE THE ELECTION TRIBUNAL, PARBHANI

*Dated the 29th September, 1959.*

## PRESENT

Raj Suraj Chand, B.A.L.L.B., Member, Election Tribunal and Distt. and Sessions Judge, Parbhani.

ELECTION PETITION NO. 23 OF 1953

## PETITIONER

Bhim Rao *alias* Baba Saheb Sawanekar*Versus*

## NON-PETITIONER

Ankush Rao Ghare.

*Claim.*—To declare the Election of Ankush Rao Ghare void and the petitioner to have been duly elected.

## JUDGEMENT

*Dated the 29th September, 1959.*

1. Shri Devi Das Rao Basmathkar, Shri Abdul Rahman Khan and Shri Shivaji Rao Deshmukh Advocates on behalf of the petitioner and Shri Annaji Rao Gavane Advocate on behalf of the non-petitioner are present. Their lengthy arguments were heard continuously on several dates from 31st August to 17th September 1959. The record was carefully examined. The cited rulings were considered. The following judgment is passed.

2. Shri Saif Tayabji was elected member of the Parliament in the Second General Election from the Jalna Constituency. He died in the month of October 1957 so the bye-election was held in the month of February 1958, to fill up the vacancy. In it there was a direct contest between Shri Bhim Rao, the Congress candidate (the petitioner) and Shri Ankush Rao Ghare, the Samati candidate (the non-petitioner). The non-petitioner secured (57,558) Votes while the petitioner secured only (51,733) Votes, so the Returning Officer declared Shri Ankush Rao Ghare to be duly elected as he had secured (2815) Votes more than the votes polled by Shri Bhimrao.

3. Shri Bhim Rao, under section 80 of the Representation of the People Act 1951, submitted the election petition on 21st March 1958, before the Election Commission of India, for declaring the election of Shri Ankush Rao Ghare (the non-petitioner) to be void and for declaring himself to be duly elected from the above said Jalna Constituency.

4. He challenged the election of the non-petitioner to be void on the following grounds:—

(1) The non-petitioner, his agents and workers bribed the poor labour voters by paying them one rupee each to vote for the non-petitioner or in the alternative as not to vote for any one of the candidate, under the plea of loss of wages of the polling day, or as a direct monetary temptation to the voters such as:

(a) The non-petitioner personally gave rupee one to every Mang and Chambar voters of village Kendhali Taluq Partur.

(b) Miyan Jan Deshmukh distributed Rs. 200 taking the same from the non-petitioner among the Muslim voters of Jintoor Town, paying them each Re. 1.

(2) The non-petitioner, his agents and workers threatened the poor voters of dire consequences, if they would not vote for the non-petitioner, such as—

(a) The non-petitioner in his village and in the adjoining villages of Partur Town threatened the poor electors that they would be removed from the employment if they would not vote for him.

(b) One Rambhau Marhata of Jalna Town threatened Muslim voters r/o Darga and Rajmahal area of Jalna that if they would not vote for the Samiti candidate their families would be ruined.

(3) The non-petitioner got printed and circulated one Urdu pamphlet titled as 'An appeal by women in the name of humanity' on 1st February 1958, wherein he made an absolutely false statement in relation to the personal character of the petitioner that he victimised the minority community (Muslims) and that he took the advantage of the circumstances and caused grave injustice to it by possessing forcibly two respectable ladies of that community, who were in helpless condition after the Police Action. It materially hurted the sentiments of the muslims and they did not cast their votes to the petitioner.

(4) The non-petitioner engaged vehicles like Tonga, Bullock Carts and Motor Cars for carrying voters to the polling booths and from there to their respective houses in Town Jalna, Ambad, Jintoor and in villages Watoor, Bhogaon etc.

(5) The non-petitioner did not submit the correct Statement of Election Expenses as provided in section 77 of the Representation of the People Act 1951, such as:

- (a) He did not include the expenses of advertisements published in Marathwada, Vivek and Maratha News Papers.
- (b) The hire amount of Rs. 10 paid to Nandu Tangawala for conveying voters to the polling Booths at Jalna Town.

(6) The non-petitioner secured the services of Government Servants against the provisions of Sub-section 7 of Section 123 of the said Act to further the prospects of his election and to refrain the voters from voting for the petitioner; such as:

- (a) The services of one Shri Moghe, the District Inspector of Schools Aurangabad, who not only canvassed for the non-petitioner but allowed the personification for obtaining ballot papers, as a presiding officer at Badnapur. He allowed Ibrahim, s/o Miyanbhai to personify his brother Ismail, son of Miyanbhai.
- (b) Shri Deshpande, the Presiding Officer at the Polling Booth village Kupta, hushed up the complaint made about the pasting of wall poster within 100 yards from the ballot boxes at the prominent place inspite of it being seized on the written complaint made by the Election Agent of the petitioner. He did not enquire as to who had pasted it.
- (c) The non-petitioner called the village Officers of village Dakephal at village Ghansawangi and successfully induced them to misdirect the voters. The village officers informed the voters that they are not entitled to vote in the bye-election with a result that not a single voter cast his vote. The petitioner thus lost 300 votes of the said village.
- (d) At the instigation of the non-petitioner's Polling Agent of Mastgad booth in Jalna Town, one Police Constable Billa No. 544 forcibly entered the Jalna Branch Office of Bhartiya Dalit Jati Sangh and tore off the wall poster of Pandit Jawahar Lal Nehru. He created a show by shouting at the persons in the office and thereby collected many voters who were frightened by his overtures. A wave of fear spread in the scheduled caste voters and due to it they did not cast their votes.

(7) The non-petitioner and his workers and agents held a public meeting at Jintoor till 2 A.M. on the night prior to the Poll i.e. on the intervening night of 1st and 2nd February, 1958.

(8) The non-petitioner through his agents and workers canvassed within 100 yards from the polling booths 2, 5, 9, 10, 16 & 20 at Jalna Town.

(9) The non-petitioner through his polling agents at Jalna Town offered Re. 1 for every ballot paper to be removed from the polling Station through the electors and the ballot papers so acquired were placed in the ballot boxes of the non-petitioner by his polling Agents and workers.

(10) The non-petitioner through his agents and workers manipulated to strike off with red pencil the names of several voters from the Official lists inspite of the fact that their names were not included in the lists of delition.

(11) The non-petitioner got published the false news items in Marathwada and in Maratha News papers that the petitioner claims the votes on the ground of being a Maratha and that the petitioner had asked some voters as not to cast



vote to the non-petitioner as he being a Brahmin, for creating a feeling in the minds of the voters about the petitioner to be a communal minded.

### **Formation of the Tribunal and the Written Statement of the non-Petitioner**

5. The Election Commission of India formed the Tribunal at Parbhani and the petition was sent to it for trial. The parties appeared on 20th May, 1958. The petitioner took time for filing the amplifying statement, which he filed on 9th June, 1958. The non-petitioner filed his written statement on 23rd June, 1958. In his written statement he totally denied the allegations made by the petitioner in the petition and amplifying statement. He has further stated that the allegations are vague and the creation of the petitioner's suspicious mind. There is no truth in them. He prayed to dismiss the petition with costs.

6. The following issues were framed on 5th July, 1958 with the consent of both the parties:—

#### **Issues.**

(1) Did the non-petitioner and his local polling Agents of village Kendhali, distribute money at the rate of Re. 1 per voter among the poor electors of castes Mang, Mahar and Chambar of the said village with the corrupt intention of procuring their votes, on the evening of 1st February, 1958, as alleged in para 4a(1) of the petition and para (1) of the amplification statement?

(2) Did Mr. Miyan Jaan Deshmukh of Jintoor Town obtain Rs. 200 from the non-petitioner on 31st January, 1958, and distribute the same among labourers of Muslim community of Jintoon Town at the rate of Re. 1 per voter in the intervening night of 1st and 2nd February 1958 as a direct monetary temptation to vote for the non-petitioner as alleged in para 4a(2) of the petition and para 2 of the amplification statement?

(3) Did Ram Bhao Maratha of Jalna Town on the direct instigation of the non-petitioner and in the immediate presence of his polling Agents of Raj Mahal and Dargah of Jalna Town, threaten the Muslim voters of the said Area with the words as alleged in para 4(1) B of the petition?

(4) Did the non-petitioner personally give threats on 1st February, 1958 in the evening to poor electors belonging to castes Mahar, Mang and Chambar of village Kendhali of dire consequences and complete removal from employment, if they do not vote for him?

(5) Did the Marathwada and Maratha Newspapers act as Agents of the non-petitioner and print and publish false allegations regarding the petitioner, that he seeks votes on the ground of his being 'Maratha' and despite of contradicting by the petitioner, in 'Lokmanya', the non-petitioner reiterate his assertion in 'Marathwada' to damage the petitioner's election prospects?

(6) Did the non-petitioner get printed in Kailash printing press and one another press, the Pamphlet in Urdu titled as 'An appeal by the women in the name of humanity' exhibit -p-1 and get circulated the same through the entire election machinery of the non-petitioner before and after the contradictions made by the petitioner and his workers. Shri Vijendra Kabra and Shri B. G. Gadhe at the public Meeting at Jalna on 1st February, 1958 and thereby attacking the personal character of the petitioner by the false allegations, effect the election results pertaining to Muslim voters.

(7) Did Shri P. K. Atre and the non-petitioner himself refer in the public meetings addressed by them at Jalna. Partur, Sailu and Ambad to the statement noted in the Urdu Pamphlet Ex. p. 1.

(8) Did the non-petitioner engage vehicles such as Tongas, Bullock Carts, and Motor cars to carry voters to polling booths as mentioned in para 4-e, 1, 2, 3?

(9) Whether the return of election expenses submitted by the non-petitioner is incorrect, and whether it does not include the expenses incurred by the non-petitioner or persons authorised by him as alleged in paras 4 & 8 of the petition in contravention of Section 77 of the Representation of the People Act?

(10) Whether Shri Deshpande the Presiding Officer of the Polling Booth at village Kupta Taluka Jintoor seized the wall-poster, which was influencing the incoming voters, of the non-petitioner from a prominent place within hundred yards of the polling booth at the instance of Election Agents of the petitioner and subsequently hushed up the matter and did not take any action under the influence of the non-petitioner though it was brought to his notice.

(11) Whether the non-petitioner procured the services of patel and patwaris of village Dhakephal during his visit to village Ghansawangi to misdirect the voters of village Dhakephal, that they are not entitled to vote in bye-election and as a result of such misdirection the Election results were materially affected?

(12) Whether at the instigation of non-petitioner the Police Constable Badge No. 544 forcibly entered the Jalna Branch Office of Bharatiya Dalit Jati Sang on 2nd February, 1958 and tore off the poster of Shri Pandit Jawaharlal Nehru and thus frightened the scheduled caste voters of the area?

(13) Did the non-petitioner and his worker Shri V. D. Deshpande address a public meeting on 2nd February, 1958, in contravention of the Section 126 of the R.P. Act?

(14) Did the non-petitioner through his agents and workers canvass in the prohibited area of 100 yards from the polling booths bearing Numbers 2, 5, 9, 10, 16 & 20 of Jalna Town on 2nd February, 1958?

(15) Whether the non-petitioner through his Polling agent at Jalna town offered Re. 1 for every ballot paper to remove from the booth without putting it in the ballot box and subsequently such ballot papers were put in the non-petitioner's ballot box in the form of bundles (if proved) what is its legal effect?

(16) Whether there was personification of the voters at the instance of the non-petitioner and through his polling agents as alleged in paras 4(g) (1) & 8 of the petition, at the polling booth at Badnapur Taluka Jalna and Kumbhar Pimpalgaon taluka Ambad?

(17) Did the non-petitioner through his agents and workers manipulate to strike off the names of the voters with the assistance of the Clerical staff of the Collectorate Aurangabad and Tahsil Offices of the Parliamentary Constituency, in spite of their names not being included in the list of delition?

(18) Whether the full particulars of the alleged corrupt practices as provided in Section 83 of R.P. Act have been stated by the petitioner in his petition and amplifying statement. If not what is the effect on the petition?

(19) To what relief the petitioner is entitled?

7. The petitioner relied on (194) exhibits and examined (69) witnesses to establish his allegations, while the non-petitioner relied on (144) Exhibits and examined (89) witnesses in rebuttal.

My findings on Issues (1) to (17) are against the petitioner and in favour of the non-petitioner on the grounds stated below:—

8. The non-petitioner has raised the preliminary objection which is incorporated in Issue No. 18 as that the full particulars of the alleged corrupt practice as provided in Section 83 of the R.P. Act have not been stated by the petitioner in his petition and amplifying statement so the petition is liable to be dismissed.

9. It is provided in Section 83(b) of the R.P. Act that the election petition should set forth full particulars of the corrupt practice which the petitioner alleges, including *as full a statement as possible of the names of the parties, the date and the place of the commission of each such act*. The commission of the corrupt practice is a ground for setting aside an election. There are various kinds of corrupt practices. The commission of the same kind of corrupt practice also requires particulars to be given in order to distinguish the occurrence or commission of one act of corrupt practice from another act of the same nature on another occasion at some other place. *A corrupt practice has been understood in the sense of a criminal charge. The offence of murder is defined in a general way in the Indian Penal Code. To sustain a charge of murder against an accused person it is necessary for the prosecution to give the material facts of the particular occurrence. It is not sufficient to say that a murder has been committed. In the same way particulars of a corrupt practice must be stated in the petition. Each case of a corrupt practice whether of the same or different kind has to be treated as a distinct ground for setting aside the election.*

10. By perusing the petition it will appear that the full particulars as required by law are not stated, but several loop holes have been kept for producing concocted evidence if procured at any time during the trial. I shall state the loop holes and defects in the petition when I shall discuss on the objections. But after the amendment of the R.P. Act the Tribunal or the Election Commission has no power to dismiss the petition for non-compliance with the provisions of Section 83.

Besides the parties have lead their evidence. The paramount object of Section 83(b) of the R. F. Act is to enable the opponent party to meet fairly the charge of alleged corrupt practice made against him. He has lead the evidence so it cannot be said that he was prejudiced by non-furnishing full particulars of the alleged corrupt practice. The petition therefore cannot be dismissed on this ground only. The same has been decided by their Lordships of the Supreme Court in *Bhagwan Datta vs. Ram Rattan Gupta* (11 E.L.R. Page 448) I, over rule this preliminary objection.

### **Nature of evidence required in the Trial of Election petition to prove the corrupt practice**

11. Before appreciating the evidence of the parties I think it proper to state as to what should be the standard of evidence and on what lines it should be judged in the trial of Election petition. There are two conflicting views on this point. The first view is that as the Legislature has made the C.P.C. applicable to the trials of the Election petition hence it is a civil proceedings. The respondent is not an accused in law, so the nature of proof should be the same as that in a Civil proceeding. The other view is that—the trial is not of a civil nature but it is almost—a criminal enquiry as there being charges of corrupt practice in the petition which may be of criminal nature, so the standard of proof required should be the same as in criminal cases. In section 90 of the Representation of the People Act it is laid down that subject to the provisions of the Act and of any rules made thereunder every election petition shall be tried as far as possible in accordance with the procedure laid down in C.P.C. for the trial of the suit, and that the provisions of the Indian Evidence Act shall subject to the provisions of the Act be deemed to apply in all respects to an election petition. Section 3 of the Evidence Act gives the definition of "Proved" by saying that a fact is said to be proved when after considering the matters before the court, either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists. The aforesaid definition indicates the degree of certainty which is required to treat a fact as proved and is so worded as to provide for two conditions of mind, first that in which a man feels absolutely certain of a fact, in other words "believes it to exist" and second that in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption of its existence. Absolute certainty is seldom to be had in the affairs of life and we are frequently obliged to act on degree of probability which fall very short of it and hence what is required in a legal trial is not absolute certainty, but so high degree of probability as to justify one in considering it as certainty and acting accordingly. Though the rules of evidence in civil and criminal cases are in general the same still the probative effects of evidence in civil and criminal cases are not always the same and hence we find that a fact may be regarded as proved for the purposes of a civil suit, though the same evidence may not be considered sufficient for conviction in a criminal case. Best says that there is strong and marked difference as to the effect of evidence in Civil and Criminal proceedings. In the former a mere preponderance of probability is a sufficient basis of decision in the latter especially when the offence charged is of serious nature a much higher degree of assurance is required. The serious consequences of an erroneous condemnation both to the accused and the society have induced the law makers of every wise and civilised nation to lay down the principle that persuasion of the guilt ought to amount to a moral certainty or such a moral certainty which convinces the minds of the tribunals as reasonable men beyond all reasonable doubt. Unlike criminal cases in civil cases it cannot be said that the benefit of doubt must necessarily go to the defendant. In other words it may be said that where is in a civil case a mere preponderance of probability is a sufficient basis of decision, but in a criminal case persuasion of guilt ought to amount to a moral certainty which convince the minds of the tribunals as reasonable men beyond all reasonable doubt. In a criminal case before the court is called upon to convict a person it shall satisfy itself that possibility of his innocence is ruled out, but in a civil case all that is necessary to insist upon is that the proof adduced in support of a fact is such that should make a prudent man to act upon the supposition that it exists in the criminal trial acting on the well established principle that it is better that ten guilty men should escape than that one innocent man should suffer, courts always insist on a much higher degree of proof.

12. There is a strong and marked difference in the standard of proof in civil and criminal cases so it becomes necessary to determine whether the election petition wherein there is a charge of corrupt practice against the non-petitioner

will be considered a case of civil nature or will be looked upon as of quasi criminal nature. In Election petition No. 116 of 1957 decided on 20th February 1958 (Shri Pratap Rao Deorao Bhosale *Versus* Shivram Sawant Khem Sawani Bhosale published in Bombay Government Gazette Part IV C dated 26th June, 1958), the view adopted is that so far as election petitions are concerned they are of civil nature and the nature of proof is such as the nature of proof in civil proceedings. But a contrary view is taken in the first appeal No. 381 of 1958 decided on 19th September, 1958 (Ahmed Miyan Sheru Miyan Shaik *Versus* Chhippa Ibrahim Muraji published in Bombay Government Gazette Part IV C dated 15th January, 1959) His Lordship Shri Chagla has observed that the election petition, wherein there is a charge of corrupt practice, should be looked upon as of quasi criminal nature. His Lordship has further observed that the corrupt practice must be strictly proved. If there is any reasonable doubt, the benefit of doubt must be given to the person against whom the charge is preferred. Their Lordships of the Supreme Court in Harish Chandra *Versus* Triloki Singh (A.I.R. 1957 Supreme Court page 444) have observed at page 456 that it should not be forgotten that the charges of corrupt practices are of quasi criminal character and that the allegations thereto must be sufficiently clear and precise to bring home the charges to the returned candidate. In Srimam *Versus* Mohd. Taqui Hadi (8 E.L.R. 139) it is observed that though the procedure to be followed in the trial of election petition is that laid down in the C.P.C., yet the standard of proof required to prove the corrupt practice is the same as in criminal cases. The charge of bribery is a serious one and the same kind of evidence is required to prove such a charge in the proceeding arising out of the election petition as is necessary in criminal trials and that in any event clear and unequivocal proof is required before a charge of bribery can be held to have been established. In Dr. K. N. Galrola *Versus* Gangadhar Maithani (8 E.L.R. page 105) it is held that the burden of proving corrupt practices is on the petitioner. *The burden of proof never shifts.* The standard of proof is an in criminal cases and that the benefit of doubt will go to the non-petitioner. In Devasharan Sinha *Versus* Shao Mahadev Prashad and others (10 E.L.R. page 461) the Election Tribunal Patna has held at page 482 that it is a settled principle that the *standard of proof* required in the matter of corrupt practices should be the same as that in the case of *criminal charge*. In Ganga Prashad Pathak *Versus* Saligram Jaiswal and another (11 E.L.R. page 415) the Tribunal of Allahabad has held at page 424 that in Election cases where the charge is of corrupt practice on the returned candidate the strict proof of the allegations is required from the petitioner.

13. It is evident from the above cited rulings that the Tribunals should keep in view the following general principles of criminal justice at the time of deciding a corrupt practice alleged in the election petition.

- (a) The non-petitioner will be presumed innocent until the contrary is proved.
- (b) The onus of proving everything essential to establish the charge of corrupt practice lies on the petitioner.
- (c) Proof in regard to corrupt practice must exclude all reasonable doubt.
- (d) Benefit of every reasonable doubt must be given to the non-petitioner against whom the charge of corrupt practice is levelled.
- (e) Suspicion, however, strong and grave it may be, cannot be legally tantamount to proof so far as the charged corrupt practice is concerned.
- (f) If the non-petitioner offers an explanation which is reasonably true, that should not be rejected.
- (g) Proof of the case against the non-petitioner is to rest not upon the absence or weakness of the explanation on the part of the non-petitioner but on the positive affirmative evidence of the corrupt practice adduced by the petitioner.
- (h) In the case of circumstantial evidence in regard to corrupt practice, the incriminating circumstances must be incompatible with the innocence of the non-petitioner and incapable of explanation upon any other reasonable hypothesis than that of the guilt.

#### **Alleged corrupt practice amounting to criminal offences**

14. In the instant election petition the petitioner has alleged against the non-petitioner that he committed grave and serious corrupt practices at the time of

election which amount to criminal offences such as the non-petitioner or his election agent or with their consent other persons:

- (1) gave bribe to the voters:
  - (a) to vote for him,
  - (b) to bring back the ballot papers without casting, for handing over the same to him,
  - (c) to vote for others by personification:
- (2) threatened the voters to vote for the non-petitioner or not to vote for the petitioner,
- (3) published and distributed a defamatory false statement attacking on the personal character of the petitioner,
- (4) Influenced the Government servants to restrain them in discharging their duties honestly as Presiding Officers and in preparing correct working copies of the electoral Rolls.

The heavy burden lies on the petitioner to prove beyond reasonable doubt the above corrupt practices. The evidence should be of the standard which is required in a criminal case to prove the guilt against the accused. The evidence adduced by the petitioner will be judged, therefore, from this point of view and it will be seen whether he has succeeded in proving his allegations of corrupt practices against the non-petitioner beyond reasonable doubt. He cannot be benefitted in any way by the weak evidence of the non-petitioner which is only of defensive nature.

#### **Essential facts to be proved for holding a corrupt practice to have been committed**

15. It is provided in Section 100 of the R.P. Act that the election of the successful candidate will be declared void if it is proved that any one of the corrupt practices mentioned in Section 123 of the R.P. Act has been committed by him (the returned candidate) or his election agent or by any other person with the consent of the returned candidate or his election agent. It is further provided that if it is proved that the result of the Election in so far as it concern a returned candidate has been materially affected by any one of the corrupt practices committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, even then the election of the returned candidate will be declared void. It is also provided that if it is proved that the returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the Tribunal is satisfied that:

- (a) No such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders and without the consent of the candidate or his election agent,
- (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not effect the result of the election,
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election,
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then it may decide that the election of the returned candidate is not, void.

16. I shall now determine whether the petitioner has succeeded in proving beyond reasonable doubt any one of the corrupt practices as alleged in the petition has been committed by:

- (1) the non-petitioner, or
- (2) his election agent, or
- (3) any other person with the consent of the non-petitioner or his election agent, or
- (4) the person other than the non-petitioner, his election agent or a person acting with the consent of the non-petitioner or his election agent, in the interest of the non-petitioner and the commission of such corrupt practice materially affected the result of the election of the non-petitioner.

*Objection No. 1 or Issue Nos. 1 and 2.**Issue No. 1.*

17. The petitioner has alleged that the non-petitioner personally gave rupee one to every Mang and Chambar voter of village Kendhali Tq. Partur. To prove the same the petitioner has examined only Shivaji Rao (P.W. 61) who is the Election Agent and Son-in-law. He has stated that while he was going to Partur from Mantha, the congress worker from village Kendhali told him about the veiled threats and tempting offers of the non-petitioner for obtaining votes, but they could not point out specific instance. This is a vague statement and it is insufficient to hold that the non-petitioner distributed personally money among the Mangs and Chambars voters of village Kendhali. In the amplifying statement the petitioner had mentioned the names of Kathaliya Mang, Madhia Mahar and Yema Chambar. He summoned them but did not examine them. The legal presumption would be against him, that they were not examined because if examined their statements would have been against him.

*Issue No. 2.*

18. The petitioner has also contended under objection No. 1 that Miyan Jaan Deshmukh of Jintoor Town obtained from the non-petitioner Rs. 200 on 31st January, 1958 and he distributed the same among the Muslim voters of Town Jintoor, by paying them one rupee each as a direct monetary temptation to secure their votes. In amplification he has stated that the voters who were so bribed are Nasir Khan, Imroz Baig and Rahim Khan residents of Jintoor Town. The petitioner examined Bhima Bai (P.W. 2), Mohd Pasha alias Miyan Jaan Deshmukh (P.W. 18), Syed Rahim (P.W. 48), Imroz Baig (P.W. 49) and Mohd Abdul Majeed Khan (P.W. 54) to prove it.

Out of the above named witnesses Bhima Bai P.W. 2 and Miyan Jaan Deshmukh are the only two witnesses to prove that the non-petitioner had given Rs. 200 to Miyan Jaan Deshmukh for distributing the same among the voters to vote for him.

19. Bhima Bai, P.W. 2, the Polling Agent of the non-petitioner at Jintoor Female Polling Booth, has stated that in her presence Miyan Jaan Deshmukh asked the non-petitioner as to whether he brought the money and he replied that he brought the same and gave Rs. 200 to him for distributing among the poor voters. Miyan Jaan gave Kamarubi, and Bibanbi each one rupee in her presence on Saturday. But it appears from her statement that she has entered the witness box to favour the petitioner and not to tell the truth. She refused to take the oath of God Budha. She deposed in cross-examination that if she would have taken the oath of Budha she would not have deposed what she deposed in the preliminary statement that the non-petitioner had given Rs. 200 to Miyan Jaan Deshmukh for distributing among the voters and Miyan Jaan Deshmukh had paid Kamarubi and Bibanbi one rupee each.

20. The object of administering an oath to the witness is to have some moral fear on his mind to refrain him from giving false evidence. She had embraced Buddhism so she was repeatedly asked to take the oath of Budha but she refused to take it. She gave her statement on the oath of God Maruti in which she had no faith. She had stated in her statement that she had no faith in Hindu Gods and Goddesses. It is obvious that she deposed a tutored and false statement and it is unreliable.

21. The other witness is Miyan Jaan Deshmukh resident of Charthana. He states that he had worked in the Bye-Election for the non-petitioner. He was sitting in the house of Shri More two days before the poll. The non-petitioner came there and told him that the situation of the Election being not favourable to him and there being no hopes of his success the witness should therefore secure votes by any means for him. He gave him Rs. 200 for distribution among the poor voters for securing their votes. He (the deponent) went with More's wife next day who distributed the money in four of five houses in his presence. She gave Re. 1 each to Bhima Bai, Kamroo Bi, Biban Bi, the wives of the sweepers and to the wife of one Mohd Chavoos. He further states that he gave Rs. 50 to Nasirulla Khan Rs. 50 to one Raheem and Rs. 50 to one Imroz Baig and Rs. 45 to Rambhau Mali for distribution among the voters.

22. Miyan Jaan Deshmukh was not the regular member of the peasants' and workers' party as per his own statement. Besides the non-petitioner has examined Baba Saheb D.W. 18, Haribhau Deshmukh D.W. 23, Salar Khan D.W. 26, Syed Osman D.W. 27, Mohd Iqbaluddin D.W. 29, Prabhakar Rao D.W. 30, Bhujang Rao D.W. 31, Mir Hashim Ali D.W. 63, Mir Tilawat Ali D.W. 66 and Narayan Rao

D.W. 83, to prove that Miyan Jaan Deshmukh had been expelled from peasants and workers party after the General Election of 1957, as there were charges against him. He had worked and canvassed in the parliamentary Bye-Election for the petitioner. Harihar Rao Deshmukh, pleader states that he had seen personally Miyan Jaan Deshmukh canvassing for the petitioner. D.W. 26 Salar Khan states that Shri Sunder Lal Sahuji, Kazi Naseeruddin, Shri Nasrulla Khan, Majid Khan, Shri Imroz Baig, Shri Syed Rahim and Shri Miyan Jaan of Chauthana had worked for the congress candidate. He had seen it personally as they had come to his Mohalla to canvass for the petitioner. Syed Osman D.W. 27 also states the same that Sunderlal Sahuji, Yeshwant Rao Talniker, Imroz Baig, Nasrulla Khan, Syed Rahim are the prominent congress workers and they had canvassed for the petitioner in the Bye-Election. Miyan Jaan Deshmukh for the petitioner in this Parliamentary Bye-Election. Mohd Iqbaluddin pleader is the relative of Miyan Jaan Deshmukh. He states that the meeting of the District Kisan Mazdoor Party was called at Kawadgaon after the General Election of 1957. The charges had been levelled against Miyan Jaan Deshmukh. He could not give satisfactory explanation so he was expelled from the party. D.W. 30 Prabhakar Rao also states that Miyan Jaan Deshmukh was expelled from peasants and workers party after the General Election of 1957. He worked for the congress candidate (the petitioner) in the Bye-Election. The same is said by Bhujang Rao, D.W. 31. Mir Hashim Ali, D.W. 63 states that after the General Election of 1957 the meeting of the workers had been called at Kawadgaon to consider as to why the Samati candidates were defeated. Shri Bhujangrao Deshmukh pleader of Jintoor (D.W. 31) levelled charges against Miyan Jaan Deshmukh that he had canvassed against Annaji Rao Gabane taking money from the candidate of the other party and lost the seat which was given to him on his insistence. The other charge was that he collected fund on the name of the party and misappropriated it and the third charge was that he created disputes among the cultivators. Miyan Jaan Deshmukh was present in that meeting. He was asked to give explanation of the charges. He could not give any satisfactory explanation so he was expelled in the next meeting held in the month of August 1957 at Parbhani. Mir Tilawat Ali D.W. 66 states the same. Narayan Rao D.W. 83 is an important witness. He was the Secretary of the Peasants and workers party District Parbhani. He states that Miyan Jaan Deshmukh was expelled four or five months after the 2nd General Election. The workers meeting was called at Kawadgaon. It was presided by Sham Rao Nalk. In that meeting Bhujang Rao put charges against Miyan Jaan Deshmukh. He could not explain the charges so he was expelled from the meeting. The witness filed the original rough minutes of the Kawadgaon meeting. It appears from it also that certain charges had been levelled against Miyan Jaan Deshmukh by Bhujangrao and he had been asked to give explanation of them.

23. Miyan Jaan Deshmukh also has stated that a meeting of the Peasants and workers party had held about 1½ months after the General Election of 1957 at Kawadgaon to consider over the causes as to why its candidates had been defeated. The non-petitioner's witnesses have deposed as noted above that the other meeting of the workers had held in the month of August 1957 at Parbhani. Miyan Jaan Deshmukh neither attended it nor he submitted the reply of the charges, so he was expelled. The rough minutes of this meeting were also filed by witness Narayan Rao.

24. If it was a fact that he was not expelled from the party and had canvassed for the non-petitioner, the petitioner would have proved that he had voted for the non-petitioner which he failed. Not a single question was asked to him as to why he did not cast vote.

25. Besides it appears from the record that he did not work for the non-petitioner at all in the bye-election. He neither called the group meeting nor he delivered the speech. No doubt he has stated that he delivered the speech in the public meeting at Partur wherein Shri Atre had also spoken, but his statement is not believable as Ikram Ali, P.W. 22, who had attended the meeting has stated that he had not seen Miyan Jaan Deshmukh in the meeting.

26. The conduct of Miyan Jaan Deshmukh also shows that he was not the member of the Peasants and workers party at the time of Jalna Parliamentary bye-election but he had been expelled. He states that he did not attend the workers meeting which was called at Aurangabad on 6th January, 1958. He admits in his statement that he did not work on behalf of the Peasants and workers party in the Municipal Election of Parbhani which held just after the bye-election on 17th March, 1958.

27. Besides oral evidence the non-petitioner has filed the newspaper 'Sudershan' dated 23rd April, 1958 (Ex. D-44). It appears from it that Miyan Jaan Deshmukh had been expelled 9 months back.

It is argued that this false news item was not published by the non-petitioner after he being informed of the election petition to discredit the evidence of Miyan Jaan Deshmukh. To draw such an inference would be incorrect. The non-petitioner had received the copy of the petition only six days before the publication of the news item. It was not possible for him to get it published in the newspaper. He was then at Delhi attending the Budget Session and the 'Sudershan' newspaper publishes from Nagpur.

28. It is proved from oral and documentary evidence that Miyan Jaan Deshmukh was not the Samiti worker when the Jalna Parliamentary Bye-Election was held. Obviously the Petitioner's allegation that the non-petitioner distributed the money among the voters through Miyan Jaan Deshmukh stands baseless. Miyan Jaan Deshmukh has stated that personally he did not distribute the money among the voters.

29. There is a discrepancy also between the statements of Bhima Bai and Miyan Jaan Deshmukh. Bhima Bai has deposed that Miyan Jaan Deshmukh gave the one rupee each to Kamry Bi and Biban Bi in her presence while Miyan Jaan Deshmukh has stated that personally he had not distributed the money among the voters. He went with More's wife (Bhima Bai) next day who distributed the money in four or five houses in his presence. She gave Re. 1 each to Bhima Bai, Kamarubi, Biban Bi and to the wife of one Mohd Chavoo.

30. Moreover Miyan Jaan Deshmukh has stated that the non-petitioner gave him the money in the morning at 9 or 10 A.M. on 31st January, at Jintoor in More's house. But it appears from the statements of Bhujangrao (P.W. 56), Shri Sharma (P.W. 69), Shri Chitnis (D.W. 2) and Shri Nirkhi (D.W. 39) that the non-petitioner was at Jalna on that day. Shri Bhujangrao the Returning Officer (P.W. 56) states that Ex. P-107 is the letter of revocation. It was filed on 31st January, 1958 by Shri Ankush Rao Ghare. Baijnath Sharma, P.W. 69 states that Shri Ankush Rao Ghare, Shri Chitnis, Advocate and Shri Sadashiv Rao Advocate had come to the police Station and complained that the congress workers arranged their meeting at the same place where the Samiti workers had arranged the meeting. He states further that he was present at the police station at that time. D.W. 2 states that he was in the Samiti office at 10 or 10-30 A.M. on 31st January, 1958. Uttam Chand and other workers of Samiti came and informed that the congress workers were intending to hold a meeting at the same place where the Samiti workers had already decided to hold a public meeting. The witness states that he, Shri Ankush Rao Ghare and Shri Sadashiv Rao Nirkhi went to Dy. S.P.'s office and Shri Ankush Rao Ghare submitted one application. Shri Sadashiv Rao Nirkhi pleader D.W. 39 states that report was received on 31st January, 1958 in the office that the congress party was intending to hold a meeting on the same place where Samiti workers had already declared to hold their meeting on that day in the night. On receiving the report he, the non-petitioner and Shri Gangadhar Rao Chitnis went to Dy. S.P.'s office and the non-petitioner submitted the application.

31. The petitioner's counsel relied on the acknowledgement receipt Ex. D-86 wherein it is mentioned that the revocation letter and the appointment letters were received on 1st February, 1958. There is a discrepancy in the statement of Bhujang Rao P.W. 56 and due to it if his statement be over looked even then there is no reason to disbelieve the statements of D.W. 69, D.W. 2 and D. W. 39.

32. The learned counsel further relied on the form of appointment of polling agent (Ex. P-8) which appears to have been executed at Jintoor on 30th January. He argues that as the form of appointment appears to have been signed at Jintoor on 30th January by the non-petitioner so he should be at Jintoor on 31st January. I see no force in the argument. The form of appointment of polling agent can be signed at any place. It is not necessary that it should be signed only at the place shown in the form. On the form the place Jintoor is not written by the non-petitioner, but it has been written by some other person. It cannot be said therefore that the non-petitioner signed on the form of appointment (Ex. P-8) at Jintoor only which is clear from the admitted facts also that the non-petitioner was along with Shri Atre on 30th January, in the morning at Partur, where a public meeting was held, then he went along with him to Jalna and held a public meeting there in the night on the same date. He then accompanied him to Ambad on 31st January. From the above facts his presence at Jintoor was not probable either on 30th or 31st January in the morning.



33. The petitioner's counsel further relied on the statement of Devidas Rao (P.W. 41). No doubt he was the polling agent of the non-petitioner in this bye-election but his statement is wholly unreliable. He states that the non-petitioner had asked Sheshrao Patwari to give Rs. 10 to Aba Saheb for engaging carts on hire for carrying lady voters to the booth saying that he would have given the same to Aba Saheb, but as he had given money to Miyan Jaan Deshmukh so he had no money with him. In the first place a Candidate who was contesting the Parliamentary election would not have Rs. 10 with him is not believable. Besides this witness has stated that this talk had taken place when the deponent and Aba Saheb had executed the forms of appointment of polling agent on Wednesday. In other words this talk had taken place on 29th January, 1958 as the poll had held on 2nd February (Sunday). Obviously the money would have been given to Miyan Jaan Deshmukh before 29th January according to his statement hence the statement of Miyan Jaan Deshmukh that the non-petitioner had given him Rs. 200 on 31st January in the morning at Jintoor is false and unreliable.

34. Miyan Jaan Deshmukh has stated that his lands were confiscated by the Hyderabad Government and they were not released and the proceeding for the release of lands is pending before The Hon'ble Food Minister. It appears that he in the hopes that the Petitioner being the President of Maharawatwada Pradesh Congress Committee would get his lands released, has deposed falsely against the non-petitioner that he had given him Rs. 200 for distributing the same among the voters to oblige the petitioner.

35. Syed Rahim r/o Jintoor P.W. 48 states that Miyan Jaan Deshmukh had come to his house one day prior to the polling at about sunset time. He gave him Rs. 50 for distributing among the poor voters of his mohalla and to ask them to cast vote for Samiti candidate. He refused to do the same saying himself to be a congress man but he pressed him to do it saying that the petitioner has kept muslim ladies in his house and has oppressed the muslims, so he agreed to do the same. He distributed the amount among the voters of his mohalla and asked them to vote for the Samiti candidate. Miyan Jaan Deshmukh came again at about 12 P.M. and asked him as to whether he distributed the money among the voters directing them to vote for the Samiti candidate. He replied that he distributed among the voters Rs. 2, Rs. 3, and Rs. 4 as per the number of the voters in their families at Re. 1 per head. In cross-examination he stated that he is the elected Congress member of the Town Committee, Jintoor. *He canvassed for the petitioner as a Congress worker till he met Miyan Jaan Deshmukh and on the day of polling he canvassed for him (petitioner) as a Congress canvassor.* In spite of disclosing the fact of distribution of money on behalf of Samiti, in the Parliamentary bye-election the congress party considered him an honest man and allotted him the ticket in the Jintoor Municipal Election which held just after the bye-election. The petitioner has not alleged in the petition that Miyan Jaan Deshmukh gave him Rs. 50 for distribution among the voters, so his statement is not believable. Besides he is the member of the Congress party. *He had canvassed for the petitioner till the evening of 1st February, 1958, when Miyan Jaan Deshmukh had asked him to distribute the money among the voters and canvassed for the petitioner on the polling day, i.e., he worked only for few hours for the non-petitioner which is not believable.* If he had actually distributed the money among the muslim voters and directed them to vote for the non-petitioner the congress organisation would have expelled him from the membership and would not have given him the ticket for the Town Committee Election Jintoor which had taken place just after the bye-election.

36. Imroz Baig resident of Jintoor P.W. 49 states that he received Rs. 50 from Miyan Jaan Deshmukh for distributing among the voters to secure their votes. He distributed it among the voters and canvassed for Samiti.

37. The petitioner has not alleged in the petition that Miyan Jaan Deshmukh had given him Rs. 50 for distribution among the voters. The witness has stated more than what is alleged in the petition, which shows his interestedness in the petitioner. Further it appears that he had given money to Osman Khan who is his sister's son and to Ayub Baig and Rasool Baig who are his cousin brothers. Their names are not in the voters list. If it be assumed that he gave money to them even then it cannot be said that he distributed the money among the voters, as it is not proved that their names were in the voters' list. He is a congress man and was the congress candidate in the municipal election. The congress body is not so fool as to give a ticket to a Samiti worker in the Town Committee Election, which held immediately after the Jalna parliamentary bye-election.

38. Mohd Abdul Majeed Khan resident of Jintoor P.W. 54 states that Miyan Jaan Deshmukh had come to his house and asked his brother Nasrulla Khan to

distribute money among the voters for securing their votes. He gave 50 currency notes of one rupee denomination to him, who handed over the same to him (the deponent) for distribution among the voters. He distributed the Urdu pamphlet and the money among Dildar Khan, Mannan, Sikandar Khan, Salar Khan s/o Daulat Khan, Maqbool Shah, Amir Khan and Syed Baba and others. This fact is not alleged in the petition that Nasrullah Khan had asked him to distribute the money among the voters. Besides in cross-examination he has stated that *he and his brothers own 30 to 40 lunds but they are in possession of the trespassers*. It appears that he has come to give evidence in the hopes that his lands will come in his possession as Shri Abdur Rahman Khan Advocate for the petitioner, Shri Safdar Ali Vakil and Shri Shaik Lal Patel advocates are the congress men and the members of the committee which is formed for the removal of illegal possessions of the trespassers from the lands of the muslims. To show his disinterestedness he states that he does not know whether *Shri Baba Saheb Sawanaker (the petitioner) is now a Congress member and Miyan Jaan Deshmukh gave evidence on behalf of Baba Saheb*.

39. In rebuttal the non-petitioner himself has come in the witness box and stated that it is incorrect that he or his agents or workers distributed money among the poor Chambars, Mangs and Mahars of village Kendhli, Tq. Partur Re. 1 each as a temptation to them to vote for him. He states further that he did not go to village Kendhli for one month before the polling. He also states that it is incorrect that he gave Rs. 200 to Miyan Jaan Deshmukh to distribute the same among the voters. Miyan Jaan Deshmukh was the member of the peasants and workers party, but he was expelled from the party in the month of August, 1957 as he had canvassed against Shri Annaji Gavane taking Rs. 500 from the congress candidate in the General Election of 1957. His statement is more reliable than that of Miyan Jaan Deshmukh.

Besides his own statement, he has examined Jagarao, Pleader (D.W. 15) *who belongs to Congress party*. He states that no complaint was received in Congress Office that the money was distributed among the voters and they were threatened.

He has also examined Bhasker Rao, Pleader (D.W. 22) of Jintoor, who states that he had worked for him in the by-election and it is incorrect that Samiti workers distributed money among the voters.

He has examined Syed Osman (D.W. 27) resident of Jintoor, who states that *in the Bye-Election the workers of either party did not distribute money among the voters. One specific question was put to him whether Imroz Baig, Nasrulla Khan and Syed Rahim had distributed the money among the voters and he replied that they had not distributed the money among the Muslim voters*. His statement is reliable as Imroz Baig and Naseruddin (Nasrulla Khan) reside in his mohalla and he has the opportunity to see them. He has stated further that Imroz Baig and Nasrulla Khan canvassed and worked for the Petitioner in the Bye-election.

The non-petitioner has examined Rambhavoo Mali (D.W. 28) resident of Jintoor. He is an important witness as Miyan Jaan Deshmukh has stated that he had given money to him for distribution among the voters. He states that Miyan Jaan Deshmukh had not given him any money for distribution. He states further that he did not give money for distribution among the voters to Sundra Bai or her husband. He remained firm in his statement in cross-examination. Miyan Jaan Deshmukh's statement that he had given Rs. 45 to Rambhavoo Mali is well rebutted by his statement.

40. The petitioner has not examined Bhimba Bai, Kamroobi, Biban Bi, *the wives of the sweepers or any other voter to whom P.W. 2 had given money in the presence of Miyan Jaan Deshmukh to secure their votes for the non-petitioner*. If they were examined they would have told the truth. The legal presumption would be against the petitioner that they were not examined as their statements would have been unfavourable to his allegation.

41. The evidence adduced is false and insufficient to hold that the non-petitioner had given Rs. 200 to Miyan Jaan Deshmukh for distribution among the muslim voters and the same was distributed among the voters to secure their votes. It is also not proved that the non-petitioner or his agents or workers distributed money among Chambars and Mangs of village Kendhali. Issue Nos. 1 & 2 are decided against the petitioner.

*Objection No. 2 (Issue Nos. 3 and 4).*

42. The petitioner's allegation is that the non-petitioner in his village Kendhali and adjoining villages of town Partur had threatened the poor electors of dire consequences if they would not vote for him. Similarly his agents and workers

for instance Rambhao Maratha of Jalna town threatened the muslim voters from Darga and Rajmahal areas of Town Jalna with these words:—

“Agar Tum Log Samiti Ko Vote Nahi Doge Tow Ham Tumahare Khandan Ko Barbad Kar Dainge. Samiti Ko Vote Dena Nahi Hai Tow Vote Daine Mat Jana. Yad Rakho.”

Due to this threatening Khala Miyan S/o Sheik Rahim, Bismilla Bi, w/o Khaja Miyan and Chote Miyan, s/o Mohd Osman did not vote.

43. The evidence of the parties on this objection can be considered under two sub-heads:—

- (1) Whether the non-petitioner threatened the poor voters of village Kendhali of dire consequences if they would not vote for him (Issue No. 4).
- (2) Whether Rambhao *alias* Ram rao Maratha threatened the muslim voters of Darga and Rajmahal areas of Town Jalna (Issue No. 3).

Issue No. 4.

44. The petitioner has examined Uttam Rao resident of Haste Pimpalgaon (P.W. 23) Tq. Jalna who states that his village is at six miles from Partur Town. The non-petitioner had come to his village  $\approx 1\frac{1}{2}$  months after Decpawali. He had come eight days before the polling. He called the Mahars Kisshan Bapu was present. The non-petitioner told them that if they vote for him he would get removed the begari system and he would try that the lands be given to them and said that if they would not vote for him they would not get work and they would be put to troubles. Due to it mahars voted for samiti. He is unable to say whether mali patel and police patel had come when the non-petitioner had threatened them. The non-petitioner did not come again to his village.

45. Kishan s/o Bapu resident of Haste Pimpalgaon Tq. Jalna (P.W. 25) states that the non-petitioner had come to his village 8 days before the polling. He had called the mahars of his village. Five to twenty five mahars had gathered but he is unable to say their names. He does not remember whether the village patel and Patwari had come when the non-petitioner had called them. He is unable to say as to who other respectable persons of the village had come when the non-petitioner had called them. He states that the non-petitioner had explained the work, done by the Samiti party for them and told that the Congress had done no good for them. The witness states further that the non-petitioner had threatened them that if they would not vote for him he would get their gaonki work stopp'd. They would not get fuel and fodder and their movement in the village would be stopp'd.

It appears that the witness was tutored to depose like this as he states of his own accord that the mahars voted for the non-petitioner.

46. Sona Bapu P.W. 24 resident of Revgaon Taluqa Jalna has stated the present psychology of the villagers that they listen to anybody if something is told to them humbly and modestly but if something is told to them by threatening, they do not listen to him. According to his own statement it is not believable that the non-petitioner would have asked him to threaten the villagers to vote for him and the witness threatened them. His statement that the non-petitioner after calling him at the Samiti office asked him to secure votes by force or threatening and he threatened the voters is not acceptable. He did not specify the names of the voters whom he had threatened.

47. The evidence adduced by the petitioner to prove that the non-petitioner or his polling agent had threatened the mahars voters in Haste Pimpalgaon and Revagaon, is inadmissible as the petitioner has not alleged the same in the petition or amplifying statement. In the petition he has stated that the non-petitioner had threatened the mangs and mahars of the adjoining villages to Partur. It is vague and insufficient. As per provisions of the Section 83(b) it was the bounden duty of the petitioner to specify in the petition all the places where the corrupt practices alleged to have been committed.

48. Besides the general statements of the witnesses that the mahars were threatened and they voted for the non-petitioner is not enough. Such sort of threatening amounts to Criminal offence and the non-petitioner would have been prosecuted but as he was not prosecuted, it is obvious that the witnesses have given a false statement.

49. In rebuttal the non-petitioner has examined Nizamuddin (D.W. 12) who is the active member of the Congress. He has received a letter dated 16th December 1956 (EXD 98) to this effect from the Secretary of Shri Devi Singh Chowan, the deputy Minister for Agriculture. He has received the appreciation letter (EXD 99) also from the District Congress Secretary Shri Abdul Rahman Khan wherein his work done during the bye-election has been appreciated. He states that no report was received by him personally or at the Congress office Taluqa Partur that the Samiti workers distributed money among the voters or threatened them. I see no reason to disbelieve his statement. He being the active member of the Congress party cannot depose false against the petitioner for whom he had worked in the bye-election whole heartedly. His statement appears to be correct. If it was a fact that the non-petitioner or his election agent had threatened the voters, they would have made complaint of it to the Taluqa Congress office or at least to the village officers or Police as this sort of threatening amounts to the criminal offence.

50. The non-petitioner has examined Bajirao D.W. 56 and Ramrao D.W. 57. They are the residents of Haste Pimpalgaon. D.W. 57 is the paid Government watchman. They say that the non-petitioner did not come to their village. If any stranger comes to the village the police patel makes the entry of it in the traveller's Register. The petitioner should have called the Traveller's Register and proved that the non-petitioner had gone to village Haste Pimpalgaon before bye-election. When the non-petitioner's going the Haste Pimpalgaon is not proved then the allegation that he threatened the mahars cannot be believed.

Issue No. 3.

51. Rambhau alias Ramrao P.W. 63 resident of Jalna states that he had worked for the Samiti candidate in the Parliamentary bye-election. Sadashivrao Nirkhi Vakil had called him at the Samiti office Jalna. Five or six persons were present there. Sadashivrao Vakil took him near the non-petitioner who was also there. He (the non-petitioner) asked him to canvass for him by request or threatening. He canvassed for him in the Mohallas Darga, Old Jalna and Raj Mahal. The witness asked the Muslims to vote for the non-petitioner and if they do not desire to vote for him, they should not go to the polling booth for casting vote. He further states that he threatened the voters of the said mohallas that if they would not caste vote for the non-petitioner, their residence at Jalna would become difficult.

In cross examination he states that the non-petitioner was not known to him before he met him in the office. He states that Nirkhi Vakil accompanied him during canvassing. The witness canvassed for the non-petitioner by saying that the Samiti is formed for the benefit of the poors and the poors would be benefitted by voting for the Samiti candidate. His statement is self contradictory. When he had canvassed for the non-petitioner by explaining to the voters that the Samiti is formed for the benefit of the poors and they will be benefitted by voting to the Samiti candidate, then his statement that he threatened the voters is a false one and it cannot be accepted.

52. Noorul Huda (P.W. 15) resident of Dargah Mohalla Jalna states that in his mohalla only muslims reside. Three or four days before the polling a public meeting one Rambhau had spoken that the muslims would suffer the consequences if they would not vote to Samiti candidate. He further states that Rambhau had also spoken that if the muslims had no intention to vote for Samiti candidate then they should not vote to any candidate. Due to his speech the muslims were terrified and they did not caste vote of their free will.

His statement is unreliable. He has not informed the police or congress office that Rambhau had threatened the muslims. Besides he states that Rambhau had threatened the muslims in a public meeting while Rambhau states that he had threatened 2 or 4 persons after going to their houses. He is a tutored witness.

53. Mohd Osman P.W. 17 states that he resides in Dargah Darwaza mohalla. Five or six persons along with Rambhau marhata had come to his mohalla 3 or 4 days before the poll. The asked the muslims to give vote to Samiti and told that if they (the muslims) do not intend to vote to Samiti then they should not go for voting. He states further that he always used to give vote to the congress, candidate but due to the threatening he did not cast vote to any party. He did not tell this fact to any body. If infact Rambhau marhata had threatened the muslims they would have told the congress workers.

54. The statements of these witnesses are unreliable as they are contrary to the petitioner's allegation. The petitioner has stated in the amplifying statement

that Rambhau marhata threatened the muslim voters on the polling day while the witnesses have deposed that he threatened 3 or 4 days before the poll.

55. The non-petitioner has examined himself and stated that he or his election agent or workers had not threatened the voters anywhere in the constituency to vote for him. He states further that Rambhau maratha was not his worker. He also states that he or his election agent or workers did not threaten the muslim voters at Jalna or anywhere that they would suffer the evil consequences if they would not vote for him. The muslim voters were not asked as not to go for voting if they do not intend to vote for him.

The non-petitioner has examined Sadashivrao Nirkhi advocate Jalna as D.W. 39 who has stated that he was incharge of canvassing in Town Jalna and he had neither asked nor he had engaged Ramrao (P.W. 63) to threaten the muslim voters. His statement is more reliable than the statement of Ramrao which is self contradictory, as the witness is a legal practitioner and knows the sanctity of oath.

The non-petitioner has examined Uttam Chand Shroff (D.W. 5) resident of Khadradbad Jalna who states that Rambhau marhata was not the Samiti worker. The Samiti workers did not threaten the muslims residents of Dargah and Raj-mahal areas of Jalna that their houses would be burnt and they would be ruined if they would not vote to Samiti candidate. He further states that the muslim voters were not asked by the Samiti workers that if they do not intend to vote for Samiti candidate, they should not vote to any candidate. He was the polling agent on the polling booth No. 13 and a worker of Samiti. I see no particular reason as to why his statement should not be believed.

In the same way Ambadas D.W. 8 states that Rambhau was not the Samiti worker. The deponent or any other Samiti worker had not threatened the muslim voters as not to vote for the petitioner saying that their houses would be burnt and they would be ruined if they would vote to the petitioner.

56. Govind Rao P.W. 16 who is the police Sub-Inspector, Sadar Bazar, Jalna states that he was incharge of 17 polling booths of Town Jalna. He received a confidential letter from the Dy. S.P. office, Jalna to make enquiry in the complaint. He made the inquiry and it was not disclosed that Samiti workers had threatened the voters. His statement has its own significance and the petitioner is bound of his statement.

57. Besides this sort of threatening amounts to Criminal offence. If in fact the muslims were threatened they would have lodged the complaint against the persons who had threatened them or at least they would have made the report to the police or to the congress leaders to take the legal action against them.

As no complaint was lodged by the muslims or congress workers so the only inference would be that the muslim voters at Jalna as contended by the non-petitioner were not threatened and the allegation of the petitioner is a concocted one.

58. The issues nos. 3 & 4 are decided against the petitioner.

*Objection No. 3 or Issues Nos. 6 & 7.*

59. The petitioner's main allegation is that the non-petitioner got printed and distributed one Urdu pamphlet titled as "An appeal by women in the name of Humanity" marked Ex. P-1 on 1st February, 1958, wherein an absolutely false statement was made in relation to the personal character of the petitioner that he oppressed the muslims and that he took the advantage of the circumstances and caused grave injustice to muslims by possessing two respectable muslim ladies who were in helpless condition after the Police Action.

60. The English translation of Ex. P-1 reads as below:

"An Appeal on Behalf of the Women  
In the Name of Humanity"

In relation to the Parliamentary bye-election there is going to be a direct contest in between the Sanyukta Maharashtra Samiti and the Congress.

The demand for the formation of Sanyukta Maharashtra is the demand of right and Justice. It is a public need and the demand of the people. In order to achieve this demand and for building the better and prospectous future it is

essential to support Sanyukta Maharashtra Samiti, and deliver a blow on the conservative and declining power of the congress.

By the by, the question about the personal character of the candidate also arises and its comparison is also essential. Shri Ankush Rao Ghare the candidate of the Sanyukta Maharashtra Samiti is B.A., LL.B., Advocate of Partur, good natured sympathetic and of noble character.

It is evident from his five years record of the Hyderabad Assembly that he raised the voice for the working classes and for the problems of the minorities irrespective of caste and creed. On the other side Shri Baba Saheb Sawanaker is the congress candidate about whom it is said with certainty that he taking the undue advantage of the time inflicted enough atrocities. He particularly made the minority Community the target of fulfilling him lust and laid his hands on some helpless, compelled and polite women, and kept them in his possession.

We question every voter in the name of humanity and nobility as to whether they by supporting such congress candidate would strengthen the vices, and whether there is no feeling of shame and self respect remaining with them.

We are certain that every male and particularly all the women will give shameful defeat to such a congress candidate.

It is printed on 1/8th demi size paper with few lines on its reverse. The name of the press is not printed on it.

61. The non-petitioner's contention is that one Urdu pamphlet (EX-D-46) was published by Samiti leaders bearing the symbol of Cart, which was his election symbol. It is on 1/4 demi size paper. It was printed in Ganga Sagar Art Press Jalna through Kailash Printing Press. The English Translation of it reads as Below:—

#### APPEAL TO MUSLIM VOTERS OF JALNA PARLIAMENTARY CONSTITUENCY

The Candidate of Samiti.—Mr. Ankush Rao Ghare, B.A., LL.B., Advocate, Date of Election, 2nd February, 1958.

Brothers and Sisters,

The history of 11 years rule of congress over the country is that it has acquired proficiency in recommendation to famine and fast, greater atrocities and difficulties unemployment and illiteracy, bullets and sticks communal partiality, day to day increments in taxes, the inadequacy of grain and food, restrictions on civic rights and suffocation on every step of democracy. It reminds the general policy of Congress.

This antipublic policy has been criticised everywhere by amalgamated democratic strength. The result of which is that, within 10 years of its rule the building of congress has collapsed. From the recent goals of success of Kerala, Bombay and Bengal it is clear that the congress has lost the public confidence. Now it has become a declining power. By taking note of this, no muslim voter will cast his vote for such a deteriorating power and will not support the congress. It is perfectly untrue that congress is the caretaker of Muslim benefits and Muslim community. Simply by offering few tickets of Parliamentary and Assembly Seats, the rights cannot be protected. Their voices are like whisper before the beat of drum. The real protection lies in solving the problems by democratic means.

Brothers, today the urge for real democracy is alive in public and the ambition to protect the Nation is the out come of collective strength. Whenever the rights of Muslim Citizens were about to suppress, Bhai Ankushrao Ghare raised his voice to oppose it. He was in Hyderabad Assembly and had always struggled for linguistic problems. Urdu language Communal partiality, help for ruined and helpless peasants and had raised his voice on all such problems of the people. Muslim community is perfectly aware of his work and realised that progress and prosperity lies in supporting his group. Their problems are not different than those of community in general, irrespective of religion and caste. Muslim community of Maharashtra has defeated the congress and has shown the living proof of it.

And now also the Scheduled Tribes, the Backward and Muslim Communities have firmly decided to defeat the congress in Jalna Election to express their discontent towards present politics and to show their urge for real democracy.

ON BEHALF OF

Aurangabad.—Khazi Salim, B.A.L.L.B., Syed Habibuddin, proprietor, Moin Deccan Press, Gulam Mohd. Bashir Nawas, Asadulla Khan, Ex-member Municipality, Chote Miyan, Hussan Bin Omar.

Parbhani.—Tilawat Ali, B.A.L.L.B., Hashim Ali, B.Com.L.L.B., Imamuddin Yakeen.

Osmanabad.—Mohd. Abdul Sattar, Subhani, Member of Endowment Board, Taj Mohammed, Rais Member of Town Committee, Mohammed Hussain, Member of Endowment Board, Badshaha Miyan.

Bhir.—Athar Babar.

Jalna.—Iftakar Ahmed, Adam Miyan, Abdul Razak, Khyrsui, Abdul Gani, Nawakham, Miyan Khan Raheem Khan, Bashir Ahmed, Shaik Hussain Bin Sale, Abdul Rajeed, Abdul Hamid, Abdul Samad Khan, Abdul Rehman Khan, Abdul Gafar, Shaik Chand Tajir, Facruddin, Rahimuddin Tajir, Chotemiyan.

62. In Ex. P-1, the personal character of the petitioner is attacked, so far being a corrupt practice under section 123(4) of the R.P. Act it should be proved that:

(A) It was published by

(1) the non-petitioner or

(2) his election agents or

(3) any other person,

(a) with the consent of the petitioner or his election agent,

(b) without the consent of the non-petitioner or his election agent but in the interest of the non-petitioner and it materially affected the result.

(B) it was a false statement and

(a) the non-petitioner believed it to be false or

(b) did not believe it to be true.

If the petitioner fails to establish the above facts beyond reasonable doubt from the convincing and cogent evidence the non-petitioner will be entitled to the benefit of doubt and the petitioner's allegation will fail.

63. The petitioner has examined Ramrao Avergaonker (P.W. 68) who has stated that he was the worker of Shetkari Kamgar Paksha. He is the elected member of the District Local Board Bhir, on the ticket of Peasants and workers party. In the Jalna parliamentary bye-election he worked for the non-petitioner. Shri Ankushrao Ghare drafted Ex. P. 1 in the Samiti office at Jalna. Shri Annaji Rao Gavane, Shri Ankushrao Ghare, the deponent and Shri Iftekhah Ahmed were present at the time of drafting of Ex. P-1. The deponent asked the non-petitioner as not to publish false pamphlet, but he said that such allegations were being made in the election though he knew them to be false. The Manager of Kailash Printing Press had come there and asked for printing work. Shri Ankush Rao Ghare told that he would send the Urdu pamphlet for printing through Iftekhah Ahmed.

The witness joined the congress 1½ months before his statement recorded on 2nd December, 1958. In other words he joined the congress in the month of October, 1958. His name is not mentioned in the petition or amplification.

64. It appears from his statement that the sub-committee of Shri Annaji Rao Gavane, Shri Shivaji Rao Vakil Mominabad and Shri Waman Rao Deshmukh of Parli had decided to set up the name of Niyanoba Patil for the Chairmanship of District Local Board, Bhir. The same is said by Shivaji Rao (D.W. 73). He has stated that he knows Ramrao Avergaonker since 1950 who was the elected member of the District Local Board, Bhir from Kej Constituency on the Ticket of Samiti. It was decided by the District Committee to elect Niyanoba Patil the President of the District Local Board, Bhir. but Ram Rao Avergaonker disliked it as it was his keen desire to be made the chairman of D.L.B., Bhir. There being a dispute for chairmanship between Niyanoba Patil and Ram Rao Avergaonker so a Tribunal of Shri Annaji Rao Gavane, the deponent and Waman Rao Deshmukh had been formed. The Tribunal decided to propose the name of Niyanoba Patil for the chairmanship and Niyanoba Patil was made the President.

65. Ram Rao disliked it. He brought the motion of non-confidence against the Chairman and as the motion and not been finally decided so he resigned from the Samiti party and joined the congress. He deposed in favour of the congress candidate in the hopes that the congress party would set up his name for the chairmanship of the District Local Board and it appears from the record that subsequently he was elected as Chairman of the District Local Board, Bhair, by the congress party.

66. Anant Rangnath (D.W. 52) states that he knows Ramrao Awargaonker since 1951-52. Formerly he was the member of Peasants and Workers party but subsequently he joined Kamgar Kisan Party, then communist party. He again joined the Peasant and workers party. Lastly he joined congress party. He was elected president of the District Local Board on behalf of the congress about 3 months back. The statement of this witness was recorded on 10th August, 1959. In other words Ramrao was elected as President after his statement being recorded on 2nd December, 1958.

It is a clear proof that Ramrao deposed false against Samiti candidate (the non-petitioner) on the promise of the congress party that he would be elected as President of the District Local Board, which was refused by the Samiti against his keen desire. The statement of Anant Rangnath (D.W. 52) is well supported by the statements of Narayanrao Deshmukh (D.W. 64), Vithal Rao (D.W. 69) and Udhav Rao, Pleader (D.W. 72).

67. Besides it appears that Ram Rao deposed false against the Samiti candidate to take revenge from the party which is apparent from his statement. He states that he considers the members of the Samiti Party to be thieves and he has no moral obligation towards them.

68. He has stated that two Urdu drafts were shown to the Manager of the Kailash Printing Press, who had come to the office to take printing work—and the non-petitioner told that he would send for printing through Iftekhhar Ahmed. It is not proved that the drafts of Ex. P-1 was sent for printing. The non-petitioner has examined Iftekhhar Ahmed as D.W. 37, who states that Samiti office Jalna had published one Urdu pamphlet, on which Prominent muslim workers of Marathwada, five districts and town Jalna had signed. The witness identified Ex. D-46 and says that it is the same Urdu pamphlet which was published by the Samiti and his name is mentioned in it among the prominent workers of Town Jalna. He states further that he had suggested to print one Urdu pamphlet to make known to the muslims the aims and objects of Samiti. The draft of Ex. D-46 was drawn by Shri Narayan Rao Waghmare, Shri Dajiba Desai, Shri Udhav Rao Patil, the deponent and Nirkhi pleader.

69. He states further that he and Narayan Rao Waghmare after going to the press placed the order for printing two thousand copies of it. The cost of printing was settled at Rs. 13 per thousand and Rs. 6 were paid extra for printing on its reverse. He states that he signed on the order book. The deponent identified his signature on the order book which is marked Ex. P-75. The order was placed on 20th January, 1958. He remained firm in the cross-examination. It is mentioned in the order book that the pamphlet was printed on 4th demisize paper and 2,000 copies of it were printed. This entry of the order book does not refer to Ex. P-1 which is on some what less than 1/8th demisize paper.

70. His statement corroborates with the entry of the order book of the Kailash Printing Press. *There is no other entry in the order book of the Kailash Printing Press to show that Ex. D-46 was printed under that Order.* On Ex. D-46 it is clearly mentioned that it was printed in Ganga Sagar Press through Kailash Printing Press.

71. The Manager of the Kailash Printing Press, Sadashiv Rao (P.W. 20), admits in his statement that he had received the order of printing Ex. D-46 from Samiti office. He admits also that Ex. D-46 is on 4th demisize. The entry of the order book Ex. P-75 and the bill Ex. P-76 refer, only to Ex. D-46 and not to Ex. P-1, but the Manager of the press coming under the influence of Beni Parshad to whom he was indebted 5 to 6 thousands has stated that the entry of the order book Ex. P-75 and the bill Ex. P-76 refer to Ex. P-1 and not to Ex. D-46.

72. The Manager of the press has stated that he had gone to Samiti office for taking the printing order. The non-petitioner was there. He told that he got the printing work done in some other press but he had to get printed one urdu pamphlet. He showed the *Symbol of cart* and the draft of the pamphlet. He showed two Urdu drafts, one of them was on behalf of Khawateen and the other draft was a big one. Shri Iftekhhar Ahmed and Shri Ghare and one or 2 other



persons were in the office. Shri Ghare had told that the drafts of the hand bills and block of the Symbol would be sent through Iftekhhar Ahmed for printing. After this talk Shri Ghare sent the draft of the hand bill which was on behalf of Khawateen through Iftekhhar Ahmed who signed on the order book on behalf of Shri Ghare against the entry made on 20th January, 1958, which reads that an order was placed for printing 2,000 copies of Ankush Rao Ghare's pamphlet on 1/8th demi size at Rs. 14-12-0 per thousand for Rs. 26. He identified Ex. P-1 to be the same pamphlet. He states further that Ex. P-1 is the half of the pamphlet which he had printed and thus he had printed total 4 thousand copies of Ex. P-1. He prepared the Bill which is marked as Ex. P-76. It reads as below:

"The cost of printing 2,000 copies of Urdu pamphlet 1/8th demi size at Rs. 13 per thousand is Rs. 26 and for the printing on the reverse side at Rs. 3 per thousand is Rs. 6. The total amount of the bill including sales-tax is Rs. 32-8-0."

In cross-examination he states that Ex. P-1 is on 1/8th demi size while Ex. D-46 is on 1/4th demi size paper. Ex. D-46 bears the symbol of cart. He states further that he does not maintain the file of original drafts though by law it is obligatory on him. He returned the original draft to Iftekhhar Ahmed for comparing the proof. No receipt was taken from him. He did not take it back as Iftekhhar Ahmed had signed on the order book. He states that also that there is no entry of Baba Saheb's printing work in the register though he had printed his work of Rs. 2,000. He states further that he is indebted to Beni Pershad, Rs. 5 to 6 thousand rupees, who is the elected chairman of the Municipality Town Jalna on congress ticket.

73. The petitioner had come to know 15 or 20 days after the counting that the non-petitioner got printed Ex. P-1 in Kailash Printing Press as stated by him in his statement but he did not mention the name of the press in the petition simply to keep a room for adducing concocted and false evidence.

74. It appears that the manager of the Kailash printing press, Jalna was influenced by his creditor Shri Beni Parshad and when he agreed under undue influence to depose false against the entry of the order book and the bill, then in the amplification dated 9th June, 1958, it was mentioned that the pamphlet was printed in Kailash Printing Press, Jalna. The Manager (P.W. 20) has deposed false on oath against the entries of the order book and the bill simply to please his creditor, Shri Beni Pershad. His statement is unreliable. If the entry of the order book and the bill would have referred to Ex. P-1, he would have written 4,000 copies instead of 2,000 and in the same way he would have entered the size of the pamphlet 1/8th instead of 1/4th. The entries of the order book marked Ex. P-75 and the bill Ex. P-76 refer to Ex. D-46 and not to Ex. P-1.

75. The non-petitioner has examined Nagnath compositor (D.W. 36) who states that he had done the over time work in Kailash Printing Press at the time of bye-election, from 15th January to 6th February. He had done the over time work from 10 P.M. to 2 A.M. and some time whole night. No pamphlet of the Samiti was printed in the Kailash Printing Press. The actual size of the pamphlet is noted in the order and the bill. Ex. P-1 was not printed in Kailash Printing Press. The original matter which is given for printing is retained in the office of the press. Ex. D-46 is printed in Ganga Sagar Press Jalna through Kailash Printing Press. The name of the press should be mentioned on the printed matter. A copy of the printed matter is sent to the police and then it is given to the party concerned. One specific question was put to the witness to say whether the bill could be prepared of Ex. P-1 taking the size of the paper to be 1/4th demi instead of its actual size 1/8th demi and he replied that the bill could be prepared but it would be incorrect as the cost for printing on the reverse side would only be Rs. 3 per thousand.

76. Baijnath, P.W. 69 states that he was S.I. L.I.B., Jalna. The Dy. S.P. had given him Ex. P-1 and had asked him to enquire as to where it was printed and who had distributed it. He made the confidential enquiry and submitted the report Ex. P-115, where he reported that he had made the confidential enquiry in all the printing presses of Jalna it was found that the presses at Jalna had not printed it.

Ex. P-72 is the report of S.D.P.O. Jalna made to the D.S.P. Aurangabad. He has mentioned in it that confidential inquiry was made through PSI L.I.B. Jalna and it appears that Ex. P-1 was not printed at Jalna. He made the confidential enquiries in all the printing presses of Jalna but it was found that it was not printed in any press at Jalna. P.W. 16 identified on it the signature of the Sub-Divisional Police Officer Jalna Division.

77. The non-petitioner has examined Hari Har Rao (D.W. 61) who states that P.W. 69 had asked him to make enquiry as to where Ex. P-1 was printed and who had distributed it. He enquired in every printing press of City Jalna, but no press manager told him that he had printed the pamphlet. He made the report accordingly. The statement of Sadashiv Rao P.W. 20 is not reliable that Ex. P-1 was printed in his press.

78. The evidence adduced by the petitioner is false and concocted one. It is unreliable. It is not proved that the non-petitioner or his election agent or the workers of Samiti with their consent got printed Ex. P-1 as alleged by the petitioner.

#### **Distribution of Ex. P-1 and its reference in the Speeches of Shri Atre**

79. It has been alleged that the non-petitioner through his agents and workers got distributed Ex. P-1 among the muslim voters residents of town Jalna, Jintoor and Partur L. A. Constituencies. The prominent leaders of Samiti Shri Atre and Shri Dange referred Ex. P-1 in their speeches which they delivered in L.A. Constituencies of Jalna, Jintoor and Partur and thereby they attacked on the personal character of the petitioner.

#### **Jalna Town and L.A. Constituency**

80. The petitioner P.W. 1 states that a public meeting was held at old Jalna on 1st February 1958, Shri Bhagwant Rao Ghade the Forest Minister had presided over it. Shaik Rahim resident of Osmanabad distributed the Urdu pamphlet Ex. P-1 in the meeting when his (the petitioner's) speech was about to end. Shri Kabra spoke after him and then Shri Bhagwant Rao Ghade. Shri Kabra had informed the Police who were on duty. But the police did not arrest the distributor. He states further that he personally did not make the written complaint to the police. He had asked Ramchander Patel to lodge a complaint to the city police Inspector about the distribution of the pamphlet but he does not know whether Ramchandra made the complaint to the police. Shri Tilawat Ali, Vakil of Parbhani, Shaik Rahim of Osmanabad distributed the said Urdu pamphlet at Jalna. Ikram Ali, Vakil of Partur and Hashim Ali, Vakil of Parbhani managed to get the Urdu pamphlet distributed in Partur constituency area. Shri Miyan Jaan Deshmukh managed to distribute it at Jintoor. At Saily Jafrabad and Ambad the polling agents managed to distribute it. The workers of the non-petitioner from Aurangabad distributed it at Jalna Town.

Shri Vijandra Kabra (P.W. 7) states that a public meeting was held at 5-30 P.M. on 1st February in old Jalna wherein he addressed the gathering after the petitioner's speech. Shri Bhagwant Rao Gadhe the Forest Minister had presided. When the petitioner was concluding his speech one Congress worker Ahmed Raza Razvi brought one pamphlet and handed it over to the petitioner who handed over the same to him (the deponent). He asked the police to arrest Shaik Rahim and take legal action against him for the illegal circulation of the pamphlet Ex. P-1 among the audience.

P.W. 55 Shri Bhagwant Rao Gadhe states that one Congress public meeting was held at old Jalna on 1st February 1958 at 5-30 or 6 P.M. He presided over it. One Urdu pamphlet was distributed among the public in that meeting. Shri Kabra had identified the distributor. He was the Samiti worker. It was distributed while the petitioner was delivering his speech, who concluded his speech 10 or 15 minutes after the distribution of the pamphlet. Congress worker Shri Razvi gave the pamphlet to the petitioner, who handed it over to Shri Kabra. He showed it to him (Shri Gadhe).

81. It appears from the statement of Ramchander P.W. 64 that his duty was to supervise and organise the election work. He made one complaint to D.S.P. on 14th February 1958 about the distribution of Ex. P-1 after receiving complete information from the Congress workers Ex. P-140 is the same complaint. The petitioner and his election agent also had made the inquiry before forwarding the complaint, but it is strange to note that the name of Samiti worker is not mentioned in it. The names of Shaik Raheem and Imamuddin Yakeen had already been known to the petitioner. At least their names should have been mentioned in the complaint (Ex. P-140). The only inference would be that the distributor had not been ascertained so nobody's name was mentioned in it, but subsequently the petitioner has falsely alleged that Ex. P-1 was distributed by Shaik Raheem, Imamuddin Yakeen, Hashim Ali and Tilawat Ali and other workers of the non-petitioner. It is an after thought. Shri Sharma, P.W. 69 states that the Dy. S.P. had asked him to make inquiry as to who had distributed Ex. P-1 and in which

press it was printed. He made the inquiry but no definite proof was found as to who had published and distributed it. As it was against the Congress candidate so the public was saying that it might have been distributed by the opposite party. He tried TO TRACE OUT AS TO WHO HAD ACTUALLY DISTRIBUTED IT BUT he could not find out. He made the report Ex. P-115 to Dy. S.P., Jalna wherein he has stated that as a result of his best efforts to find out the distributor of the said pamphlet he could only succeed in gathering an information that the person was a stranger to the locality (Bazar Mohalla old Jalna). He was wearing Gandhi cap, dhoti and Nehru shirt. He was of medium height and minor in age.

As the non-petitioner is praised and the petitioner's character is shown bad in Ex. P-1 so the public might have said that it was distributed by Samiti workers but on assumptions it cannot be held that the non-petitioner of his election agent or other persons with the consent of the petitioner or his election agent distributed the pamphlet Ex. P-1. There should be *congent and clear proof* of the same to hold the non-petitioner liable for it. The petitioner should have examined Ahmed Raza Razvi, the congress worker. He would have told as to who had given him the pamphlet.

82. Abdul Karim P.W. 5 and Shaik Ibrahim P.W. 6 residents of Tattupura state that they received the pamphlet Ex. P-1 while they were sitting in the hotel but they do not know as to who was the distributor.

P.W. 33 Amina Bi states that she had worked in the bye-election for Samiti candidate. Bane Khan had given her son some Urdu pamphlet for distribution who gave her the same one day prior to the poll at 4 P.M. He had told her that Baba Saheb Sawaneker had kept two muslim ladies in his house. He had dismantalled the mosque at Osmanabad and he had beaten muslims. She states that the Muslim ladies changed their views and cast the vote to Samiti candidate. *She did not cast vote as she was busy in bringing the voters.* She and Dagdi Man canvassed for Samiti among four or five hundred muslim ladies and appealed them as not to cast vote to the petitioner. She and Dagdi Man distributed the pamphlet till 9 P.M. The pamphlets were like cinema handbills. There was no photo on them. She states that *she cannot identify THE PAMPHLET IF IT BE SHOWN THOUGH SHE HAD DISTRIBUTED* it as she had distributed it in post it cannot be said therefore that she had distributed Ex. P-1.

In cross examination she states she worked only in the bye-election. She did not work before or after this bye-election for Samiti. *Bane Khan is the Congress elected member of Jalna Town Municipality.* He had promised her that he would give her some money for canvassing so she had worked. *She is not aware what is Congress and what is Samiti.* Even before receiving the pamphlet she had canvassed against Baba Saheb Sawanaker saying that he had dismantalled the Mosques and after receiving the pamphlet she had canvassed against him saying that he has kept Muslim ladies in his house forcibly. *She further states that she canvassed at the instance of Bane Khan. It was announced on the Loudspeaker before she had received the pamphlet that the petitioner had kept two Muslim ladies in his house.* As per her statement it had been announced long before the poll on the loudspeaker that the petitioner had kept two muslim ladies in his house, but no contradiction of it was made by the congress either by holding a public meeting or by publishing a hand bill. Her statement is contrary to the allegation of the petitioner as he has not alleged that it was announced on the loudspeaker that he kept muslim ladies in his house. She is a tutored witness and her statement is utterly false and it is not believable even for a second. *She has deposed what Bane Khan had tutored her to depose.*

83. Bane Khan P.W. 10 states that he attended the public meeting presided by Shri Bhagwant Rao Ghade, held on 1st February 1958. One pamphlet was distributed in it and on the same night Shri Tilawat Ali gave him 25 or 30 copies of pamphlet Ex. P-1 and he distributed them in his mohalla. He states that he had worked for the congress candidate Late Tayab Ji in the second General Election of 1957 and in the Municipal Election of Town Jalna. He was elected on the congress ticket. It is not appealing to the mind that the man who had worked in the General Election of 1957 for the congress party and who was elected in the Municipal election of 1958 on congress ticket would distribute a defamatory statement against the petitioner who was the President of the Marhatwada Pradesh Congress Committee particularly when he was not the member of the Samiti. If it was a fact that Shri Tilawat Ali had come to his house on 31st January and told him that Shri Baba Saheb Sawanaker had kept two muslim ladies in his house and had oppressed the muslims and had asked him to distribute the pamphlet Ex. P-1, then instead of distributing it he would have informed the congress party. His statement is unreliable and it appears that he deposed a tutored and false statement to favour the congress party.

84. Mir Tilawat Ali has come in the witness box as D.W. 66 and has stated that he worked nominally for Samiti in the Jalna Parliamentary bye-election as he was the Secretary of Awkaf committee and he had to make arrangements of Urus which held from 31st January to 3rd February. He has given his statement referring to Ex. P-122 to Ex. P-134 and it appears from his statement that he was very busy in the Urus arrangements from 30th January to 4th February and it was not possible for him to leave the place of Urus. I see no reason to disbelieve his statement. He is a Pleader and knows the importance of oath. He has denied to have held any group meeting at the house of Bane Khan (P.W. 10) and to have given him Ex. P-1 for distribution.

85. The statement of Shri Tilawat Ali is well supported by the statement of D.W. 75. He is an old man of 75 years. He states that the Urus of Hazrat Shah Turabul Haq had held from 31st January to 3rd February. He was the member of the Urus committee. Mir Tilawat Ali was the Secretary and incharge of Urus arrangements. He states that he saw Mir Tilawat Ali making arrangements of the Urus from 21st January to 4th February. He (Tilawat Ali) remained at Darga only during this period and took his meals also there. I see no reason to disbelieve his statement.

86. A man of common sense will not believe that Shri Mir Tilawat Ali who was busy in the Urus arrangements would have gone to Jalna simply for distributing Ex. P-1. It is not proved that Shri Tilawat Ali had any influence on the muslims of Jalna.

87. Gulam Mohd. resident of Khadrabad (P.W. 19) states that he attended the public meeting addressed by Shri Atre. He spoke in his speech about the two candidates. He spoke that Ankush Rao Ghare is a Law Graduate. He was the member of the Hyderabad Legislative Assembly. He is of good character. Baba Saheb Sawanaker is only middle pass and his character is not good. He has kept two or three muslim ladies in his house. Shri Dange also had spoken in his speech that Baba Saheb Sawanaker had kept two or three muslim ladies in his house and appealed the muslims as not to vote to the petitioner. Shri Ankush Rao Ghare affirmed whatever Atre and Dange had spoken in their speeches and appealed the public to vote for him. Shri Atre told in his speech that within two or three days one pamphlet would also be circulated among the public in support of their statements. The urdu pamphlet was distributed at Jalna among the public one day before the polling by the Samiti workers. *He does not know their names.* His general statement that Samiti workers distributed the pamphlet is insufficient. He states further that the muslim feelings were hurt. He and other muslims did not cast their votes. In cross examination he states that he did not hear that the congress party contradicted orally or in writing of Atre's speech. Shri Atre's speech was humorous and true facts can be put in humorous way, but he used the words M.P. for Baba Saheb Sawanaker in a serious tone and not in a humorous way. According to his statement Shri Atre had spoken in the public meeting 4 or 5 days before the poll and if he had said that the petitioner had kept two or three muslim ladies in his house the congress party would have contradicted it by holding a meeting or by issuing a pamphlet but as no meeting was called to contradict it, so the only inference would be that Shri Atre had not stated anything about the personal character of Baba Saheb in his speech and the statement of the witness is unreliable. He has given false evidence simply because he was made vice President of Jalna City Municipality by the congress organisation.

#### Ambad

88. P.W. 11 Abud Bin Ahmed resident of Ambad states that one day before the polling one urdu pamphlet was distributed in his village, wherein the Samiti candidate was praised. He states that it was written in it that the petitioner is a "Battebaz" and something about Akliyati Tabka (Minority community) was also written. He states that he showed the pamphlet to his uncle who is a congress man. *He told him that the allegations made in the pamphlet are false and advised him to vote for the Congress as such canvassing is generally done at the time of Election. He voted accordingly.* He is unable to say as to how MANY MUSLIMS DID NOT CAST THEIR VOTES. In the speech much was said against the petitioner and it was appealed to the public that they should not vote to the petitioner and vote to the non-petitioner. *He is the labourer of Papalal Seth, who is a Congress-man. His summon was served at the Congress Office, Jalna, one day before his statement. Papalal had asked him to go to Jalna.*

It appears that he deposed under the influence of Papalal. Besides the witness has not stated as to who had distributed the pamphlet in his village.

89. Haji Saheb P.W. 34 resident of Ambad, states that a public meeting was called at Ambad on 31st January 1958 at 8 P.M., wherein Shri Atre spoke that the petitioner being an incompetent man the congress party should not have given him the ticket. Tayabji was a muslim so Sheikh Lal Patel, resident of Aurangabad should have been given the ticket. He had spoken also that the petitioner has kept two muslims ladies in his house and appealed to the audience as not to cast their votes to him. He further states that a meeting of ladies was also held at his house wherein the wife of Mohd. Yusuf addressed the ladies that the petitioner had kept the Muslim girls in his house and oppressed the muslims after Police Action, so they should not cast vote to him. He further states that Mrs. Mohd. Yusuf had spoken in her speech that what had been spoken in the speech would be supported by a pamphlet and that would be circulated in the Public next day. He saw one such pamphlet being distributed on Saturday in the morning by one Bakshish Hussain of Ambad in the bazar. It was in Urdu. It was written in it that the petitioner had kept two muslim girls in his house and he oppressed the minority communities. He does not remember what else was written in it. Due to the speeches and distribution of pamphlet 3 to 4 hundred muslims did not caste vote to any candidate. Shri Atre spoke in Marathi and Urdu.

In cross examination he has stated that he was sitting near Ibrahim Saheb. He did not hear the speeches of ladies. But on the way while they were coming to his house they had told him that they would address ladies as stated above. He states further that his wife or any other women who had attended the meeting did not tell him as to what the wife of Mohd. Yusuf and the other lady speakers had spoken in the meeting. *He admits that he had inferred from the talk that the wife of Mohd. Yusuf might have spoken in the ladies meeting that the petitioner had kept two Muslim girls in his house and he oppressed the Muslims. He does not know what actually was told in the meeting. His eldest son Abdulla is the elected Congress member of the Town Committee and is a Congress leader.* He states that he received the pamphlet on Saturday.

He is interested in the congress party. If it was spoken as stated above in the meeting, he would have told the same to his son who is the congress leader and his son would have contradicted it. He had come to know the same on 31st January 1958, in the meeting. The polling was on 2nd February 1958. It was easy for the congress party to contradict it by holding a public meeting. It appears that he is a tutored witness and has deposed in favour of the petitioner under pressure of his son who was elected in the town committee election of 1958 on the congress ticket. He has deposed a tutored statement which is evident from the statement that he remembers only this much that Baba Saheb Sawanaker has kept two muslim girls in his house and oppressed the muslims. He does not remember as to what else was spoken in the speech and what else was written in the pamphlet. *He has admitted, in his statement that he had not given any importance to the pamphlet as generally such pamphlets are distributed during election campaign.*

#### Revagaon

90. P.W. 24 Sona Bapu was the polling agent of the non-petitioner at the polling booth Revagaon in the parliamentary bye-election. He states that the non-petitioner had sent some copies of Ex. P-1 for distribution among the muslims and he distributed the same on Saturday in the morning. *In cross examination he states that the non-petitioner, personally or the workers of Samiti had not given the pamphlet but one person of village Murthi had brought the pamphlets.*

It is evident from his statement that he did not receive Ex. P-1 directly from the Samiti office or from the non-petitioner. His statement is self contradictory and it is not believable.

91. It is not mentioned in the petition or amplifying statement that the pamphlet Ex. P-1 was distributed at Revagaon. The petitioner should have specified the places where the pamphlet was distributed as provided in Section 83(b) of the R.P. Act. The petitioner's general statement in the petition that Tilawat Ali and other workers mentioned in the petition in consultation with the non-petitioner employed other workers and managed to circulate the pamphlet in their respective regions is insufficient. His allegation being not specified the evidence adduced by Sona Bapu is inadmissible and unreliable.

#### L.A. Constituency Partur

92. Misbahuddin P.W. 12 states that the public meetings were held at Partur. He attended one public meeting, which held 2 or 3 days before the poll, wherein Shri Atre addressed the gathering. He spoke in his speech that the petitioner

besides being not much educated had kept two muslim ladies in his house and oppressed the muslims. He praised the non-petitioner saying that he is law graduate, practising lawyer and Watandar of village Kendhi. He appealed the audience to cast their votes to the non-petitioner and not to the petitioner. In cross examination he states that he remembers this much only and does not remember anything else what Atre had spoken in his speech as 5 or 6 months have passed. One Urdu handbill was distributed by Shri Hashim Ali Pleader of Parbhani one day before the poll. He had received one copy of it. He read it. Ex. P-1 is the same handbill which was distributed by Hashim Ali in Partur town. After reading the pamphlet the muslim feelings were hurt and they did not cast vote to the petitioner or to the non-petitioner. The muslims had always cast vote to the congress candidates as the congress organisation is in power. He says further that he or his family members did not cast vote in the bye-election. There might be two hundred voters in Kazi Mohalla. In cross examination he states that he remembers the name of Tayabji as he was the prominent person and not because he was Muslim. He states further that a case is pending against him regarding protected tenancy in Tahsil Partur. The non-petitioner is the pleader on behalf of the tenants against him.

It appears that he deposed against the non-petitioner because he (the non-petitioner) is the pleader of the tenants against him.

93. P.W. 21 Fateh Mohd. resident of Partur states that he had heard the speeches of Shri Atre, Miyan Jaan Deshmukh and Shri Ankush Rao Ghare in one public meeting held at Partur two or three days before the polling. Shri Atre said much about the good character and educational qualification of the non-petitioner. He spoke also in his speech that the petitioner is uneducated and has kept some muslim ladies in his house after Police Action and is taking undue advantage of them. He also spoke that within 2 or 3 days one pamphlet would also be circulated in the public in this regard. He states that he received one pamphlet one day before the polling at about 5 or 6 P.M. Shri Hashim Ali Vakil distributed one Urdu pamphlet at Partur and gave him one copy of it. The contents were like Ex. P-1. After hearing the speech and reading the pamphlet the feelings of muslims were hurt and they decided as not to vote to any party. The public of Partur was saying to each other that the congress candidate being so bad in character it would be better as not to cast vote to any party. On the same night at 10 P.M. he met Shri Abdul Rahman Khan advocate Parbhani and he showed the pamphlet to him but he told him the contents of it to be untrue. He believed his statement and next day he voted.

In cross examination he states that *Miyan Jaan Deshmukh did not say anything in his speech about the petitioner's character.* The non-petitioner also did not say anything about the character of the petitioner. Shri Atre delivered speech on Thursday (30th January) in the morning at about 9 A.M. at Partur. Four or five months back he became the Congress member and was elected on the Congress ticket in the Town Committee Election of 1958. He states that he does not remember that Shri Atre had spoken that 105 persons had shed their blood for the formation of Sanyukt Maharashtra and keeping the same in view they should vote for Samiti. He had not compared the educational qualification of the candidates and had not asked the audience to cast vote to a suitable candidate giving the simli of a girl who has to choose her husband from a law graduate and the middle pass and has not spoken that the girl will prefer to marry a graduate. He does not remember anything else of Atre's speech except that he has stated above. *Shri Atre delivered his speech in Urdu.* The deponent is not acquainted with Marathi.

It appears that he is a tutored witness. He had not attended the meeting at all wherein Shri Atre had delivered his speech as it is an admitted fact of the petitioner's other witnesses that Atre had given the simli of a girl when he had compared the educational qualification of the two candidates. *He has come to give evidence on behalf of the petitioner simply because he was elected in Town Committee election Partur of 1958 on the Congress ticket.*

94. Syed Ikram Ali, P.W. 22 states that he was the polling agent of the non-petitioner at Partur. He heard the speech of Shri Atre which was delivered 2 or 3 days before the polling at about 9 A.M. In his speech he had said much against the congress organisation, congress minister own the congress candidate. He spoke about Baba Saheb Sawanaker that he is bad character. He had told some thing about the ladies while speaking about the bad character of Baba Saheb Sawanaker, but he does not remember exactly as to what he had said in his speech. He said that one should be ashamed to cast vote to the petitioner who is of bad character. He compared the two candidates in his speech giving a simli

of a girl who has to select a husband for her from two persons one of them being a law graduate while the other only a middle pass, then the girl will prefer to marry a graduate boy. He has stated also that he had seen the Urdu pamphlet *one or two days before the poll* at the shop of Hasan Chaus at Partur. Gulam Dastgi, Hashim Ali pleader and 2 or 3 other persons were there. Shri Hashim Ali was saying to them that the petitioner is not of good character so they should not cast vote to him. Shri Hashim Ali had the pamphlet and asked them to read as to what had been written about the character of Baba Saheb Sawanaker in it.

He states further that those who had read it might have thought about Baba Saheb Sawanaker to be of bad character. In cross examination he states that Shri Atre *delivered his speech in Marathi*. Shri Yeshwant Rao Chowan did not contradict in his speech what had been spoken by Shri Atre about the bad character of the petitioner. He (The Chief Minister) is the leader of the congress party. He is a responsible man. If it was a fact that Shri Atre had spoken about the bad character of the petitioner he (The Chief Minister) would have contradicted it, but as no contradiction had been done, so the only inference would be that Shri Atre had not spoken anything adverse about the character of the petitioner. The witness further states that he did not take any adverse effect of Atre's speech. He took it in the light of Election propaganda stunt. He cannot say about others but in his opinion the illiterate might have been led away by the propaganda. He did not hear that the congress workers or leaders had contradicted the statement made about the bad character of Baba Saheb Sawanaker in the pamphlet and the speech of Atre. He did not make any inquiry to ascertain its correctness as he considered it to be a right matter. The petitioner is not known in common public. He (the deponent) did not distribute the pamphlet in the public nor he had seen Hashim Ali distributing the same in the public. He had seen the pamphlet with Hashim Ali at the shop of Hasanchau. It cannot be said that Hashim Ali or the non-petitioner's polling agent Syed Ikram Ali distributed the pamphlet.

95. P.W. 59 Abdul Rahman Khan resident of Partur states that he heard the speech of Shri Atre which was delivered in Bhaji Mandi at Partur. It was presided by Daji Saheb. Patwari and pleader from Partur. It held at 10 A.M. in the morning. He states that Shri Atre had spoken in his speech that Baba Saheb Sawanaker is the enemy of the minority community and is less educated than the non-petitioner. He had given while comparing the educational qualifications of the candidates one simile of a girl who has to choose her husband from the educated and uneducated boys, and said that she would choose the educated one. He had spoken also that the petitioner had kept two muslim girls in his house. The non-petitioner also addressed the audience after the speech of Shri Atre and Miyan Jaan Deshmukh. Next day Hashim Ali Pleader and one local Samiti worker Rahman Shah distributed the pamphlet and urged the public to vote for Samiti in the light of Atre's speech and the pamphlet. According to his statement the pamphlet was distributed on 31st January which is contrary to the petitioner's allegation. He states further that he read the pamphlet. Due to the speech and Urdu pamphlet the muslims including himself cast the vote to the Samiti candidate instead of congress candidate. He states further that Ex. P-1 is the same urdu pamphlet which was distributed by Hashim Ali pleader in Partur. His statement that Hashim Ali distributed the pamphlet is a tutored one as he was asked to identify Hashim Ali showing him Mir Tilawat Ali Pleader of Parbhani and he stated that he might be Hashim Ali. There is no resemblance between the two. In fact he does not know Hashim Ali pleader of Parbhani, but as he was tutored to depose that Hashim Ali distributed the pamphlet so he deposed the same. Besides the names of this witness is neither mentioned in the list of witnesses nor he is summoned through Court.

His statement is wholly unreliable. In the original list of voters of 1953 Ward No. 3, Block No. 2 at Serial No. 223 and 224 his name and of his wife were mentioned but they were scored as their names appeared in the deletion list of 1956. Their names against appear against Serial No. 610 and 611 in the amended list of 1956. He states that he had his wife voted, taking the poll chits on serial Nos. 610 and 611 but as a fact it is incorrect. There is no mark of issuing ballot papers against their names. The numbers of the ballot papers are also not mentioned. In India due to illiteracy many persons do not know the importance of voting and do not exercise their right of voting. This is an illustration of it. But as he was tutored to depose that the muslim feelings had been hurt due to the pamphlet and he had been tutored to depose that the muslims including himself had voted for Samiti, so he deposed the same. When he personally or his wife have not voted to Samiti, due to the pamphlet then how could he say of others that they deposed for Samiti and their feelings had been hurt.

96. P.W. 57, Rangnath resident of Aundha states that he worked for Congress in the Parliamentary Jalna Bye-election at Partur. In a public meeting presided by Shri Daji Saheb held at 9 or 10 A.M. in the morning one or two days before the polling Shri Atre compared the educational qualifications of the petitioner and the non-petitioner and said that the petitioner is a non-matriculate while the non-petitioner is a law graduate. He also spoke about the bad character of the Petitioner and said that a pamphlet would also come before them in proof of what has been said about Baba Saheb Sawanaker in the speech. He spoke that the petitioner had oppressed the muslims and kept two muslim ladies in his house. Shri Ankush Rao Ghare also spoke that a pamphlet would come before the public, supporting the speech of Shri Atre. One day before the polling Shri Hashim Ali Pleader of Parbhani and two or three other persons of Partur distributed Urdu pamphlet in the muslim mohallas of Partur one Voter who was intending to vote for the congress candidate showed the pamphlet to him. He read it and said that whatever is stated in it about Baba Saheb Sawanaker is incorrect. He further states that he also took one pamphlet from Shri Hashim Ali. The pamphlet Ex. P-1 is the same pamphlet which was distributed by Shri Hashim Ali Pleader of Parbhani at Partur.

He should have stated the name of that voter, who had the intention to vote to the petitioner and the petitioner should have examined him. It would have been a good evidence to establish that the muslims refrained from voting due to the distribution of Ex. P-1. He has given evidence as he is the Vice chairman of the District Development Board, Parbhani. *He was the Chief Convassor of the petitioner.* If it was a fact that Shri Atre had referred Ex. P-1 in his speech and spoken about the bad character of the petitioner, he would have contradicted it by calling a meeting. It is said that Govind Rao Deshpande had contradicted Atre's speech in the public meeting presided by Daji Saheb Deshpande, but he was not examined by the petitioner. The deponent did not make report to the police or the congress office that Hashim Ali distributed Urdu Pamphlet Ex. P-1. He stated in favour of the petitioner simply because he is the Vice Chairman of District Development Board Parbhani, and he had taken the contract of Devgaon feeder road 5 or 4 years back, which completed five or six months back but its final payment was not made.

97. Hashim Ali has come in the witness box as D.W. 63 and stated on oath that he was at Sailu on 1st and 2nd February and prior to 1st February he was at Parbhani for 4 days. On 31st January 1958 he had a case in the Sub Judge Court (Kanniah Lal Versus Venkatlal), on 30th January he had one case in the District Court (Mohd. Ibrahim Versus Zahoor Bi), on 29th January he had one case in the District Magistrate Court (Shamrao Versus Abaji), on 28th January he had a case in the District Judge's Court (Bankat Lal Versus Tenabai). The non-petitioner has filed the certified copies of the proceedings of the above said dates and called the original files and it appears from the proceedings of the above dates that the said proceedings bear his signatures. It clearly shows that Hashim Ali was present in Parbhani from 28th January to 31st January as stated by him on oath.

Besides it appears from the statement of P.W. 42 that he had seen Mir Hashim Ali Pleader and Imamuddin Yakin on 1st February going towards Jintoor at about 11-30 A.M. There is no connecting evidence to prove that Hashim Ali went from Jintoor to Partur on the same day in the evening. The fact also contradicts his presence and distribution of pamphlet Ex. P-1 at Partur on 1st February 1958 at 5 P.M.

### Town Jintoor

98. Mohd. Pasha alias Miyan Jaan Deshmukh P.W. 18 states that he is the worker of peasants and workers party after police Action since 1951. He was the member of the District unit of Peasants and workers party. He worked in the bye-election for the non-petitioner in Partur Jintoor assembly constituency areas. Shri Atre had delivered speech in the public meeting at Partur 2 or 3 days before the polling. He had spoken that the petitioner had oppressed the muslims after police Action and kept two muslim ladies forcibly in his house. Shri Ankush Rao Ghare personally had given 4 or 5 hundred copies of Urdu pamphlet Ex. P-1 two days before the poll at Jintoor in the office of Peasants and workers party. He distributed them one day before the polling. The contents of it were defamatory to the petitioner. He gave the said handbills to Sharfuddin of Jintoor, Waman Govind of Charthana, Nago Rao, Mohd. Haneef and Mohd. Osman of Charthana.

I have already held under objection No. 1 that Mivan Jaan Deshmukh was not the Samiti worker when the Jalna Parliamentary bye-election was held. I



have already stated under objection No. 1 that Miyan Jaan Deshmukh's lands had been confiscated by the Hyderabad Government and they had not been released. He in the hopes that the petitioner, being the president of Marathwada Pradesh Congress Committee would get his lands released, has deposed falsely against the non-petitioner to favour the petitioner. His statement that the non-petitioner had given him 400 or 500 copies of Ex. P-1 for distribution among the muslims is not believable.

99. P.W. 41 Devidas Rao resident of Bhogaon Taluq, Jintoor, the polling agent of the non-petitioner, states that the non-petitioner gave 50 or 60 copies of the Urdu pamphlet Ex. P-1. He read it. *He had given the handbills two days before the polling i.e. on 31st January.* He distributed the pamphlet personally in the town one day before the polling i.e. on 1st February. The non-petitioner secured votes due to his canvassing and distribution of pamphlet. In cross-examination he states that he had the view to cast vote for Samiti as he had worked for Samiti. The non-petitioner did not come to his village. He had no talk with the non-petitioner before executing the form of appointment of polling agent. He had only seen him two or four months before the polling at Partur. Dagdoba the son-in-law of Bhujang Rao had come to call him 2 or 3 days before the polling saying that he was called at Jintoor by Bhujang Rao and the non-petitioner. Next day he went to Jintoor along with one Aba Saheb.

His statement is not believable that the non-petitioner had given him the pamphlets for distribution. He has stated that Dagdoba, the son-in-law of Bhujang Rao was the polling agent for the congress candidate (the petitioner) and he canvassed for the petitioner and also distributed the poll chits of the petitioner. This witness admits that Dagdoba was present when the non-petitioner had talked with him and had asked Shesh Rao to give Rs. 10 to Aba Saheb and handed over the pamphlet to him. *If it was a fact Dagdoba WOULD HAVE informed the Congress office Jintoor and would have held the public meeting to contradict it.* His silence is a clear proof that the statement of this witness is a false one. It is not appealing to the mind that the non-petitioner who is a law graduate would have given the defamatory pamphlet in the presence of a congress worker to a stranger with whom he had no previous acquaintance.

100. P.W. 43 Mohd. Osman states that he worked in the parliamentary bye-election for Samiti. Miyan Jaan Deshmukh had given him five to fifty Urdu pamphlets for distribution. It was written in it that Baba Saheb Sawankar oppressed the muslims. He has kept two muslim ladies in his house. He took the pamphlets to Charthana and showed the same to literate muslims to read over to illiterate muslims. Due to distribution of the pamphlet the voters who were intending to cast vote to the congress candidate voted to the non-petitioner. He further states that he was not influenced by the speech of Nana Patel, but he voted for Samiti candidate due to the pamphlet as it affected adversely on his feelings. His statement is unreliable. It appears that he deposed false as his sons had been arrested by the police and the police had taken the remand, but they were released on bail at the instance of Miyan Jaan Deshmukh and congress leaders.

101. P.W. 45 Nago Rao states that he was the polling agent of the non-petitioner at the polling booth Jam Buzurg. Miyan Jaan Deshmukh had given him some handbills on Friday for distribution in Jam Buzurg and he distributed the same there on Saturday. It appears that there were four houses of muslims in Jam Buzurg and only one muslim knows to sign. It is not convincing that in such village the pamphlet would have been distributed.

102. P.W. 47 Syed Hashim states that in the Jalna parliamentary bye-election Iqbaluddin, Miyan Jaan Deshmukh and Shanker Rao had canvassed for Samiti in Jintoor. They were saying to the voters as not to caste vote for Baba Saheb Savanekar as he is of bad character. He is tyrant and has kept two muslim ladies after police action in his house. They distributed one Urdu pamphlet also and asked the public to read it. He identified Ex. P-1 to be the same pamphlet. The feelings of muslims were hurt due to it and they did not cast vote to the petitioner.

103. P.W. 49 Imroz Baig states that he received one bundle of Urdu pamphlet from the office of Peasants and workers party. He distributed the same. Ex. P-1 is the same urdu pamphlet.

104. P.W. 50 Kazi Zainulabuddin resident of Jintoor states that he had worked for Samiti in the Jalna Parliamentary bye-election. One day before the polling Miyan Jaan Deshmukh gave him some urdu pamphlets for distribution wherein

it was written that Baba Saheb Sawanekar had oppressed the muslims and kept two muslim ladies forcibly in his house. Ex. P-1 is the same pamphlet. He says that he had explained the contents of the pamphlet to the voters and told the voters to vote for the congress candidate. Whatever Miyan Jaan Deshmukh had told him at the time of handing over the pamphlet the same he told the people. In other words Miyan Jaan had asked him to tell the voters to vote for the petitioner.

105. P.W. 54 Mohd. Abdul Majced Khan resident of Jintoor states that Miyan Jaan Deshmukh gave some urdu pamphlets wherein Shri Ankushrao Ghare was praised while some facts about the bad character of Baba Saheb Sawanekar were mentioned. He distributed the pamphlet.

106. The statements of Mohd. Osman P.W. 43, Nagorao P.W. 45, Syed Hashim P.W. 47, Kazi Zainulabuddin P.W. 50 and Mohd. Abdul Majeed Khan P.W. 54 have no importance as they have stated that they received the Urdu pamphlet from Miyan Jaan Deshmukh. They did not say that the non-petitioner or his election agent had given them the pamphlets. I have already held that Miyan Jaan Deshmukh was not the Samiti worker at the time of bye-election, so the non-petitioner is not responsible for the acts of Miyan Jaan Deshmukh.

107. Imroz Baig's statement is not believable. He deposed false that he received the pamphlet Ex. P-1 from the Samiti Office because he is the elected congress member of the Town Committee Jintoor in the recent Town Committee Election of 1958. Besides it is not convincing that the congress organisation in the Municipal Election held only 2 months after the Bye-election would have given the ticket to a man who had distributed defamatory pamphlet against the petitioner.

#### Bori

108. Sadashiv Rao, P.W. 42, states that one day before the polling of Jalna parliamentary bye-election he was going to Bori from village Kope for canvassing purposes. He boarded the bus, Shri Hashim Ali Pleader and Imamuddin Yakin met him. They had one bundle of pamphlets with them which they had received from Jalna. Vithalrao Daithanker was also with the deponent. Vithal Rao Daithanker took out one pamphlet from the bundle in the presence of Imamuddin and gave the same to him, (the deponent). He read it and asked Imamuddin Yakin as to what was the need of publishing such pamphlet. Imamuddin replied that such propaganda was carried out in Election. Imamuddin belongs to Samiti party. He was the elected member of the Parbhani Municipality on behalf of the Samiti. The deponent identified Ex. P-1 to be the same pamphlet which was with Imamuddin Yakin and Hashim Ali Pleader. In cross examination he states that he did not hear during the period of 7 or 8 years about illegal and dishonest acts of Shri Ankush Rao Ghare. Shri Ganpat Rao Pedgaonker Pleader had shown him the same pamphlet on the day of polling at Bori.

109. P.W. 46, Ganpat Rao Pedgaonker Pleader states that he was directed by the Secretary to be at the polling booth Doodhgaon. He went there and from there he came to Bori via Jhari. He met Sadashiv Rao Yeldarkar Vithalrao Daithanaker and Imamuddin Yakin in the Hotel. Some one brought one pamphlet and gave the same to him, (the deponent) saying that it was distributed at Bori by Imamuddin Yakin one day before the polling. He also told that it effected the poll. On questioning Imamuddin Yakin told that he received the pamphlet and distributed it. He (the deponent) told him that it was not proper for him to distribute such pamphlet. He gave the pamphlet to C.I.D. Inspector Kulkarni, who had met him at the pan-shop for making inquiry. He identified Ex. P-1 to be the same pamphlet.

110. P.W. 58 Keshorao Kulkarni, states that he was supervising the Jintoor and Partur L.A. Constituencies in the Jalna Parliamentary bye-election on the polling day. He visited Bori circle on 2nd February 1958. He met there Ganpatrao Pedgaonker, who gave him one urdu pamphlet saying that such pamphlets were distributed at Bori and he received one. He states further that Ganpat Rao Pedgaonker had not told the name of the person from whom he had received it but he had told that it was distributed by Samiti workers. He states further that he made inquiry but he could not get information as to who had distributed it. He cannot say whether it was distributed by Samiti workers or by some other persons. He deputed the Head Constable but he could not find out as to who had distributed it. He received it from Ganpat Rao Pedgaonker. Nobody else complained to him. It was distributed at Bori, Partur and Jalna. About eight days after polling he came to know that it was distributed by Samiti workers, but their names were not revealed. Ex. P-1 is the same pamphlet which was

handed over to him by Shri Ganpat Rao Pedgaonker. He further states that he reported the full speech of Shri Atre to Higher officers. He cannot say orally the contents of Atre's speech. He cannot say whether Atre had spoken that Baba Saheb Sawanekar had kept two muslim ladies in his house. But he might have said the same.

The statement of this witness has its own importance. He is a Police Sub-Inspector of C.I.D. Branch whose duty is to investigate and inquire in the offences. His statement negatived the statements of Shri Ganpat Rao Pedgaonker and Sadashiv Rao Yeldarker. If Sadashiv Rao had disclosed the name of Imamuddin Yakin to Ganpat Rao Pedgaonker, he would have told the name of Imamuddin Yakin to the C.I.D. Police Sub Inspector Sadashiv Rao was present in the Hotel. He would have told Ganpat Rao Pedgaonker when some person had brought the pamphlet Ex. P-1 and given the same to Ganpat Rao Pedgaonker that Imamuddin Yakin had a bundle of such pamphlets. Ganpat Rao Pedgaonker is a pleader. He would have told the same of Imamuddin Yakin to P.S.I. CID Branch (P.W. 52) but he did not tell the same to P.S.I. CID, so it is a clear proof that it is an after thought. There is no reason to disbelieve the statement of Keshorao. He is a public servant and he is not interested with any party. The preference can be given to his statement over the statement of Sadashiv Rao Yeldarker P.W. 42 and Ganpat Rao Pedgaonker P.W. 46. They are interested persons. Sadashiv Rao Yeldarker admits that he canvassed for the congress candidate in the Jalna parliamentary bye-election. Formerly he was the worker of Peasants and workers party but resigned it two months before, the General Election of 1957 and joined congress organisation in the hopes of gaining popularity in the public. He was made the president of Taluqa Congress Committee Parbhani. In spite of being the president of taluqa Congress committee and in spite of being a pleader he did not give any importance to the pamphlet. He says in reply to the Court question that he had torn it. He did not show it to any one in the congress office at Bori and to any congress worker. He says that he had informed the office bearers of the Gram Congress Committee but he is unable to tell their names in the same way the statement of Ganpat Rao Pedgaonker has no importance though he is a pleader. He says that he is the sympathiser of the congress and that it was his desire that the congress candidate should have been elected in the Parliamentary bye-election and he had canvassed for him. His feelings were hurt by the defeat of the petitioner on the hands of the non-petitioner and therefore he came on behalf of the petitioner to give evidence and took the name of Imamuddin Yakin whose name he had not taken before Shri Keshorao Kulkarni P.S.I. CID Branch to show that it was distributed by the active worker of the Samiti. If Imamuddin had distributed or brought the pamphlet *Shri Ganpat Rao Pedgaonker would have disclosed his name to Shri Keshorao Kulkarni*, as he knows the importance of 1st information. His non-disclosure of Imamuddin Yakin's name is a clear indication that his name is connected afterwards with the pamphlet with a view to see the petitioner seated for whom he had canvassed and the non-petitioner unseated.

111. In view of the statement of Keshorao Kulkarni the statements of Sadashiv Rao Yeldarker P.W. 42 and Ganpat Rao Pedgaonker P.W. 46 have no importance and it cannot be said that Imamuddin Yakeen had brought the urdu pamphlet Ex. P-1 to Bori and it was distributed by him

112. Imamuddin Yakin has come in the witness box at D.W. 65 and stated that he had worked for the non-petitioner in the bye-election for one week prior to the poll in villages Bori, Kawdsi, Pipri, Kokh and Makh. He says that he was in village Kawdsi on 1st and 2nd February. He did not distribute Ex. P-1 and did not met Shri Ganpat Rao Pedgaonkar in the Hotel in Bori and did not admit before him that he had distributed the pamphlet Ex. P-1. Sadashiv Rao Yeldarker also did not meet him. He did not distribute any pamphlet. I see no reason to disbelieve his statement.

113. The petitioner has stated that he had come to know through written reports of the congress workers and Secretaries of Taluqa congress committee that Shri Atre had spoken about him to be uneducated. He has stated that Shri Narhar Rao Secretary of Partur Taluqa Congress Committee, Shri Nimodiya Secretary of Town Jalna Committee Shri Apparao Kondikar resident of Sailu the president of pathri Tq. Congress Committee, and the Secretary of Bhokardan Taluqa Congress Committee had reported him about the speeches of Shri Atre. He further states that Shri Atre had used the word Ashikshit (uneducated) for him while comparing his educational qualification with the non-petitioner who is a law graduate. It is evident from his statement that the responsible congress office bearers had reported that Shri Atre had only compared his educational

qualifications with the educational qualifications of the non-petitioner in his speeches. It does not appear from his statement that he had received the reports that Shri Atre had spoken about his personal character. If there was any such thing as deposed by the petitioner's witnesses the same would have been mentioned in the reports and the petitioner would have filed them to prove his allegation that Shri Atre had spoken about him that he had kept two muslim ladies in his house who had come for shelter to the congress office after police Action and had oppressed the muslims.

114. It appears from Ex. P-151 also that Shri Atre had not spoken a word in his speech about the personal character of Shri Baba Saheb Sawanekar. The news item dated 31st January 1958 Partur titled as "Stormy propaganda of Acharya Atre in Marhatwada" published in Marhata dated 2nd February 1958, reads as below:

"On behalf of Sanyukta Maharashtra Samiti a propaganda meeting was held yesterday at about 10 O'clock in the morning at Bhaji Mandi ground in support of Samiti candidate Shri Ankush Rao Ghare B.A. LL.B., wherein Shri Atre had spoken. It was hot sun at that time, till more than 2 thousand persons attended the meeting. In his most impressive form of speech Acharya Atre narrated the whole story as how congress kicked off the just demand of Maharashtra for the formation of Sanyukta Maharashtra. Further he narrated the heart breaking story, as how congress unjustly imposed the bilingual State upon 3 crores Marathi speaking people by the help of guns and he also spoke the story of cruel deeds of the congress. He revealed the histories of many congress leaders. He further added that the Samiti candidate Shri Ankush Rao Ghare is B.A. LL.B., while the congress candidate Shri Baba Saheb Sawnekar has not studied upto sixth standard. What he will do then in the parliament. He will only raise his hand against Sanyukta Maharashtra".

115. In the presence of this clear documentary evidence the oral statements of P.Ws. discussed above have no importance. The statements are unreliable and unbelievable.

116. It appears that the persons who were benefited by the congress party have given evidence that the pamphlet Ex. P-1 was distributed by the non-petitioner and with his consent by the workers of the Samiti but no independent responsible person was examined to prove that the urdu pamphlet Ex. P-1 was published and distributed by the non-petitioner or his election agent or by any other person with their consent. M.Ps. and M.L.As. and other responsible office bearers of the congress party such as Nimodriya Secretary of Jalna City Congress Committee, Shri Narhar Rao Secretary of Partur Taluqa Congress Committee, Shri Apparao Kondikar the president of Pathri Taluqa Congress Committee and the Secretary of Bhokardan Taluqa Congress Committee, Bhalchander the Secretary of Ambad Taluqa Congress Committee, Gopi Kishan the Secretary of Jalna City Congress Committee, Kishan Chand other Secretary and Joshi the president of Mandal Congress Committee Jalna, Kashinath Appa of Jintoor, Shri Abdul Rahman Khan, were not examined who had made the reports to the petitioner and who had remained along with him in his enquiry except Shri Bhagwant Rao Gadhe. Even Shri Bhagwant Rao Gadhe had not stated on oath that the non-petitioner or his election agent circulated the pamphlet. He has stated that Ex. P-1 was distributed among the audience in the meeting presided by him. On the tutored statement of interested witnesses who were benefited by the congress party and who are under its obligation, it is difficult to hold that it is proved beyond doubt that the non-petitioner or at his instance the workers of Samiti distributed Ex. P-1.

117. In rebuttal the non-petitioner has given his own statement and stated that neither he nor his election agent nor any other person with their consent published and circulated Ex. P-1. He has examined Uttamchand, the respectable shroff of Khadrad Jalna, who states that he worked for the non-petitioner in the bye-election. Ex. P-1 was neither published nor circulated by the Samiti workers. Ex. D-46 was published and circulated in the public. Mohd. Ismail D.W. 6 states that one urdu pamphlet bearing the symbol of Cart was distributed in the public by Samiti worker. Ex. D-46 is the same pamphlet. Sadashiv Rao Nirkhi Pleader Jalna D.W. 39 states that he, Iftekhhar Ahmed, Narayan Rao Waghmare and Udhav Rao Patil drafted Ex. D-46, Ex. P-1 was neither published nor distributed by Samiti workers.

Khushai Rao Motala Pleader D.W. 46 Aurangabad states that only Ex. D-46 was distributed by the Samiti workers. It was published by the Muslim workers of Samiti.

Ram Chandra Pleader of Ambad D.W. 43, states that one Urdu pamphlet was received from Jalna office. It was published by the muslim leaders of Samiti. It is Ex. D-46. He further states that he did not receive any other urdu pamphlet for distribution.

Bakhshish Hussain D.W. 44 resident of Ambad, states that one Urdu pamphlet bearing the symbol of Bullock cart was distributed. Ex. P-1 was not distributed.

Pandit Rao of Ambad, D.W. 45, states that one urdu pamphlet bearing the symbol of cart was distributed. He identified Ex. D-46, to be the same pamphlet. He states further that no other urdu pamphlet was distributed in his village.

Rajeshwar Rao Pleader of Partur, D.W. 11, is an important witness. He was the active member of the Congress till March 1958. He worked for the petitioner in the Jalna Parliamentary bye-election. He states that one group meeting of the Congress workers was held about one month before the polling at the house of Baba Saheb Ambhure. About 50 workers had attended it. Shri Baba Saheb Swanekar, Shri Yeshwant Rao Masalker, Shri Devidas Rao Rathi, Shri Jagan Nath, Shri Pandit Rao Kulkarni, Shri Nooruddin, Shri Bismilla Khan and others had attended the meeting. It was settled that Rangnath Bangale and Bhim Rao Waturker would look after the propaganda canvassing work and under their directions the local workers would work at Partur. Anant Rao Kawthekar is the active member of the Congress. He has come from Jintoor to Partur for practice. He states further that he canvassed for the petitioner, but the public was showing its feeling of hatred and was saying as to why he was asking to vote for the petitioner. He states further that he saw Ex. P-1 in the house of Anant Rao Kawthekar. Anant Rao Kawthekar took out 20 to 25 copies of the pamphlet Ex. P-1 from his pocket and said that he had brought them from Jintoor. He did not say as to who had given him. He states further that he did not see Hashim Ali in Partur one or two days before the polling. He states further that the petitioner was unpopular and Congress workers did not work wholeheartedly as Rangnathrao Bangale was made in charge of canvassing at Partur who was not the worker of Partur. He is a pleader and knows the sanctity of oath so I see no reason to disbelieve his statement.

Nizamuddin resident of Partur D.W. 12 is an important witness. He is the active member of the Congress. He has received the appreciation letter from Shri Abdul Rahman Khan the Secretary of the District Congress Committee, wherein his work, rendered in the Jalna Parliamentary bye-election had been appreciated. He states that the person who has attended the group meetings told him about the low character of Baba Saheb Sawanekar and about his misbehaviour. He further states that he had seen the pamphlet Ex. P-1 in the Drawing Hall of Bismilla Khan who is a Congress worker, who had received it from Anant Rao Vakil Kawthekar. He states further that on reading Ex. P-1 it created no effect on him as such news were circulating from the time of election propaganda. He states further that he did not give any importance to Ex. P-1 so he did not inform Shri Abdul Rahman Khan and did not make report of it at the Congress office.

Bhasker Rao resident of Jintoor D.W. 22 states that Urdu pamphlet Ex. D-46 was distributed by the Samiti workers in the public.

Harihar Rao pleader Jintoor D.W. 23 states that Samiti workers distributed Ex. D-46. It bore the symbol of cart.

Taj Mohd. resident of Bori D.W. 24 states that Ex. D-46 was distributed by Samiti workers at Bori.

Salar Khan resident of Jintoor D.W. 26 states that one urdu pamphlet was distributed by Samiti workers. It bore the symbol of cart. He identified Ex. D-46 to be the same pamphlet which was distributed by the Samiti workers.

Syed Osman resident of Jintoor D.W. 27 states that the Samiti workers distributed Ex. D-46. No other urdu pamphlet was distributed.

Mohd. Iqbaluddin resident of Jintoor D.W. 29 also states the same that the Samiti workers distributed Ex. D-46.

Bhujang Rao pleader resident of Jintoor D.W. 31 is an important witness. He states that he was responsible for the distribution of pamphlets in the village. One urdu pamphlet was received from Sailu office. It was an appeal to the muslims to vote for the Samiti candidate. It bore the symbol of cart. He identified Ex. D-46 to be the same pamphlet. He states further that Majeed Khan, Imroz Baig, Nasrulla Khan, Miyan Jaan Deshmukh canvassed for the Congress candidate.

Tolba Rao Gavane, pleader of Parbhani, D.W. 32 states that one Marathi pamphlet was issued by the prominent workers of Marathwada. The 2nd Marathi pamphlet was issued by the Samiti leaders of outside Marathwada. The third pamphlet was issued by the Republican party. The fourth pamphlet was issued by the Muslim Samiti workers. It was in Urdu and Ex. D-46 is the same pamphlet.

118. The rebuttal evidence is more reliable. Most of them are pleaders. They perform a noble profession. They know the importance and sanctity of oath. They remained firm to their statement in the lengthy cross-examination of the learned counsel of the petitioner.

119. I hold that the petitioner utterly failed to prove that the Urdu pamphlet Ex. No. 1 was distributed at the instance of the non-petitioner or his election agent by the workers of the Samiti. It is also not proved that Shri Atre or Shri Dange spoke about the bad character of the petitioner and referred Ex. P-1 in their speeches delivered at Jalna, Jintoor and Partur L.A. Constituencies.

Whether the distribution of Urdu pamphlet Ex. P-1 materially affected the Election of the non-petitioner?

120. I have held in the foregoing paragraphs that the non-petitioner nor his election agent nor any other person with their consent published and distributed Urdu pamphlet Ex. P-1, but as a fact it had been distributed in the public. It is possible that it might have been distributed by some persons in the interest of the non-petitioner without his consent to see him elected. The petitioner has not alleged in his petition that the corrupt practice had been committed by other persons without the consent of the non-petitioner or his election agent in his interest, but he has alleged in clear words that the non-petitioner got printed and distributed Ex. P-1 through his agents and workers in the whole parliamentary constituency. It is not obligatory on me to consider this objection of the petitioner from this point of view as decided by Their Lordships of the Allahabad High Court in *Ram Abhi Lakh versus Election Tribunal* (14 E.L.R. Page 375) and *Madanlal versus Syed Hyder* (13 E.L.R. Page 456), but the issue has been framed as to whether the distribution of Ex. P-1 affected on the election result so I think it proper to appreciate the evidence from this point of view also and determine whether the distribution of Ex. P-1 materially affected the Election of the Non-Petitioner and the election can be declared void under Section 100(1) (d) (2) of the R.P. Act.

121. It appears from the evidence that the voters did not take the contents of the Ex. P-1 seriously. They considered it only as an election propaganda stunt. The petitioner himself did not take the distribution of Ex. P-1 seriously. He had received it while he was delivering his speech. He delivered the speech for 10 to 15 minutes more even after receiving the pamphlet but he did not say a word in contradiction of it in his speech. It can be said that he had taken it very lightly and did not think it necessary to contradict its contents. His subsequent explanation that he was in hurry to go is not appealing to the common-sense.

122. The statement of Shri Kabra that he had asked the police to arrest the distributor and take legal action against him is not acceptable. The police constable had been posted at the meeting to maintain order. It was their duty to arrest mischief mongers. They were Government servants. They had no concern with any party. If Shri Kabra had requested the police constables, they would have surely arrested the distributor. The distributor was not arrested so it can be inferred that Shri Kabra had not asked the police constable to arrest the distributor as he had taken the distribution of pamphlet Ex. P-1 only in the light of election propaganda stunt and he had not taken it seriously.

123. P.W. 5, Abdul Karim states, that in Tatoppura mohalla where he resides there would be 100 or 125 Muslim voters. Almost all the Muslim voters had voted to late Tayyabji in the general election of 1957. In the instant bye-election only 11 to 17 Muslims voted as one Urdu pamphlet Ex. P-1 was distributed on the evening of 1st February 1958. The Muslims considered the petitioner to be of bad character and they decided as not to cast vote for him. If the pamphlet would not have been distributed the Muslims would have voted for him. The Muslims did not make any inquiry about its correctness.

He further states that he did not cast his vote. In cross examination he states that late Tayyabji secured more votes than Rustomji as he was an educated good charactered Muslim. His statement is a general one that at the time of general

election of 1957 all the Muslims had voted to late Tayabji and in the bye-election only 10 to 15 Muslims had voted. He should have stated at least some persons who had voted when late Tayabji had stood and they had not voted in this bye-election. He has not stated about himself that he had voted in the general parliamentary election. Assume his statement to be correct even then it would be wrong to infer that as late Tayabji had secured more votes the petitioner would have also secured more votes than the non-petitioner being a Congress candidate. The witness has stated that late Tayabji secured more votes than Rustomji because Tayabji was an educated and good natured Muslim. It appears that the petitioner being not a Muslim and the Congress party set him against the desire of the Muslims so the Muslims had not voted for him. The non-petitioner was also a non-Muslim, so the Muslims decided as not to vote to any candidate. If this was not the mentality of the voters there was no reason for Rustomji to have secured less votes than late Tayabji at the booths of Jalna Town in the election of 1957, when both of them had been the Congress candidates and the canvassing was done for both of them simultaneously. Rustomji had secured only 6,029 votes while late Tayabji secured 7,793 votes.

124. Bane Khan, P.W. 10 states that Shri Tilawat Ali had come to his house either on 30th or on 31st January 1958 and asked him that he would hold a meeting at his (deponent's) house. He called 15 to 20 persons of his mohalla. Tilawat Ali told them that the petitioner had kept two Muslim ladies in his house and tortured them by burning some parts of their bodies. He had told further that the petitioner had gone before Police Action outside the Hyderabad State and had taken the oath that he would not enter Hyderabad State unless and until he would murder three hundred Muslims. He appealed the Muslims as not to vote such a tyrant and cruel person. Shri Tilawat Ali had given him 25 or 30 copies of Ex. P-1 at his house on 1st February which he distributed among the Muslims of his mohalla. The Muslims who had received it started coming to his house. Some of the Muslims were saying that they would cast their votes to the Congress candidate, but some were saying that the Muslims should not vote for the Congress candidate as he had hurted their feelings. The majority of Muslims decided as not to cast their votes to any candidate. He states further that when Tilawat Ali Vakil had told the Muslims about the oppressors and bad character of the petitioner. The Muslims had objected. He has further stated that he had canvassed for Samiti but the Muslims did not take effect of it. They were impressed and changed their view after seeing the Urdu pamphlet Ex. P-1. No doubt he has stated that the Muslims were impressed by Ex. P-1 and they changed their view after seeing it, but he has stated the same because he is an elected Congress member of the Town Jalna municipality. It appears by reading his whole statement that the Muslims were not impressed by what had been told by Shri Tilawat Ali. They had objected to his allegations. It also appears that the Muslims were not impressed by reading Ex. P-1 as some of the Muslims told that the Muslims should vote to the Congress candidate as previous. It appears to me that the majority of Muslims decided as not to vote to any candidate because the candidates of both the parties were non-Muslim and the vacant seat was of a Muslim and the Muslim had the desire that the set up candidate for that seat would have been a Muslim one. I shall deal with this point in detail later on.

125. P.W. 14, Miyan Khan alias Miyan Dad Khan, resident of Kadeem Jalna states that he received one pamphlet next day after the meeting which held on 30th January 1958. It was given to him in the night at 10 p.m., by Bane Khan (P.W. 10). Due to the speech and the pamphlet the Muslim feelings were hurt and they decided as not to vote for the petitioner. But in cross examination he states that he cast his vote in spite of hearing the speeches and receiving the Urdu pamphlet. It appears from his statement that he was not affected by the pamphlet or the speeches delivered by Shri Atre and Dange, etc., then how could he say about other Muslim voters that they were affected by the speeches and the pamphlet and they refrained from voting.

126. Noorul Huda, resident of Darga Mohalla, Jalna (P.W. 15) states that in his mohalla only Muslims reside. One day before the poll at 8-30 p.m. Shri Tilawat Ali, pleader had come. He called 15 or 20 Muslims and told them that the petitioner had kept two Muslim ladies in his house forcibly and at Osmanabad he constructed one building for the Congress office in the Muslim grave-yard. This witness states further that in the last General Election the Muslims had voted to Tayabji. He further states that if the pamphlet would not have been distributed, the Muslims would have voted to the Congress candidate. All the Muslims had voted to Tayabji, who had stood in the Parliamentary Election of 1957. In the Municipal Election of 1958 the deponent was elected from Rohilla Mohalla as a Congress candidate. He is unable to say whether all the Muslims

cast their votes to Rustomji. *Rustomji is a noble man.* He is the resident of Jalna. Tayabji had secured more votes than Rustomji. Nisar Ahmed had told him about the bad character of Baba Saheb Sawnekar 3 or 4 days before the polling and Shri Tilawat Ali had told him one day before the polling. No Congress meeting was held after the speech of Nisar Ahmed to contradict the allegation made against Baba Saheb Sawnekar. He did not tell anybody about the speeches and distribution of the pamphlet Ex. P-1. Shri Yeshwant Rao Chawan had come to Jalna two days before the polling. He had sent the invitation to him but he did not attend the meeting. He appears to be a tutored witness. If it was a fact, he would have told the same to Shri Yeshwant Rao Chawan, the Chief Minister of Bombay who would have contradicted it. *Besides it appears from his statement that the Muslims had voted to late Tayabji as he was an educated Muslim. It also appears from his statement that Rustomji being not a Muslim could not secure so many votes as late Tayabji had secured in the General Election though he was also an educated and good natured person.*

127. P.W. 6, Sheik Ibrahim, states that he and other Muslim voters of Tatoonpur did not cast their votes in the parliamentary bye-election as one Urdu pamphlet Ex. P-1 was distributed one day before the poll. The Muslims changed their views after reading it. It hurted their feelings. If this Urdu pamphlet would not have been distributed, the Muslims would have cast their votes to the petitioner as he was a Congress candidate. They always cast their votes to Congress candidate, as the Congress party is in power. The Muslims had voted to Bane Khan and Tayabji being the candidates of Congress and not because they were Muslims.

He is a tutored witness. He was asked to say what is meant by the Urdu word "Zawal" (decline) used in the pamphlet Ex. P-1 and he says that it means "Zulum" (oppression). He was further asked to say what is meant by "Akliyat" (minority) and he says that it means "Accha" (good). He was also asked to say what is meant by "Dastdarz" (to lay the hand) and he says that he does not know. In spite of he being not able to explain as what is meant by the words used in the pamphlet he says that it had been written in it that Baba Saheb Sawnekar was the oppressor. On the statement of such witness it cannot be said that the Muslim feelings were hurted and they refrained from voting to the petitioner.

128. The statement of Misbahuddin, P.W. 12, resident of Partur is utterly false that he and his family members did not cast vote due to the distribution of pamphlet Ex. P-1 and the speech of Shri Atre. His name in the original list of voters appears on serial No. 577 and in the amended list at serial No. 717. The name of his mother is mentioned in the original list of voters at serial No. 578 and in the amended list at serial No. 718. His sister's name is mentioned in the original Electoral Roll at serial No. 579 and in the amended list of voters at serial No. 719. They are marked as Exs. P-67 and 68. The ballot papers are mentioned against their names and they are tick marked. In other words the witness and his family members voted in the bye-election and did not take any effect of the pamphlet and the speech of Shri Atre. His statement that his family members did not cast their votes due to the distribution of Ex. P-1 is absolutely false. He is a tutored witness and he has deposed false against the non-petitioner simply because the non-petitioner is the pleader on behalf of the tenants against him. His statement has no value.

129. Syed Ikram Ali, Pleader, resident of Partur, P.W. 22, states that he did not take any effect of Shri Atre's speech. He took it in the light of election propaganda stunt. He did not make any enquiry about the correctness of the allegation made in the pamphlet Ex. P-1 as he took it to be a light matter.

130. Haji Saheb, resident of Ambad, P.W. 34 states that he did not give any importance to the pamphlet as generally such pamphlets are distributed during election campaign.

131. Abdul Rahman, P.W. 59, has stated that due to Atre's speech and Urdu pamphlet the Muslims including himself did not vote to the petitioner. He and his wife voted to Samiti candidate. But his statement is utterly unreliable. He is a tutored witness. In the original list of voters of 1953, Ward 3, Block No. 2 at serial Nos. 223 and 224 his name and his wife's name were mentioned but they were scored as their names appear in the deletion list of 1956. Their names again appear against serial Nos. 610 and 611 in the amended list of 1956. He states that he voted taking the poll chits on the said serial number but as a fact it is false. There is no mark of issuing ballot papers against their names and the ballot numbers are also not mentioned. His statement that Muslims were affected by the distribution of Urdu pamphlet and Atre's speech and voted to



the non-petitioner is false and a tutored one. When he personally or his wife has not voted to the non-petitioner then how could he say of other Muslims that they voted to Samiti candidate and their feelings had been hurt.

132. Amir Khan, resident of Partur (P.W. 60) states that one Urdu pamphlet Ex. P-1 was distributed by the local Samiti worker Rahman Saheb during the parliamentary Jalna bye-election. He says that he voted for Samiti. If the pamphlet would not have been distributed he would have voted for Congress.

He is a tutored witness. His name is not in the list of witnesses nor he is summoned through court. He has not stated that he had voted for the Congress candidate in the General Election of 1957 and in the Municipal Election of 1958. He should have shown from his previous and subsequent conduct that he did not cast vote to the Congress candidate in the Jalna bye-election due to Ex. P-1. This much of his statement that he would have voted to the petitioner if the pamphlet would not have been distributed is insufficient to hold that he changed his view and voted to the non-petitioner.

133. Fateh Mohd, P.W. 21 has stated that he cast his vote for the petitioner. It is evident that the speech of Atre and the pamphlet Ex. P-1 did not effect on his mind. It further appears from his statement that he showed the pamphlet to Shri Abdul Rahman Khan, the Secretary of the District Congress Committee, but he (Shri Abdul Rahman Khan) did not take any step for its contradiction. He neither informed the police nor the Congress office. This clearly shows that Abdul Rahman Khan also had taken it very lightly, otherwise he being a Muslim and a responsible Congress office bearer would have taken the steps for its contradiction.

134. Rangnath, P.W. 57 also took the pamphlet Ex. P-1 very lightly. He was the Chief Canvasser for the petitioner, but he did not make the report of its distribution even to the Congress office as he had not given any importance to it.

135. Bizamuddin, resident of Partur (D.W. 12) states that he is the active member of the Congress. He states that he did not give importance to Ex. P-1 so he did not inform Abdul Rahman Khan, the District Congress Secretary and did not make report of it at the Congress office.

136. The speeches of Shri Atre or Ex. P-1 had not adversely affected the minds of the Muslims as stated above and the Muslims had not refrained from voting in the Jalna parliamentary bye-election due to it. It appears that they decided as not to vote to any candidate as the vacant seat was of the Muslim and the Muslim candidate was not set up by any party. This inference is supported by the speech of Hon'ble Shri Yeshwant Rao Chawan, the Chief Minister of Bombay, delivered in the workers meeting held on 2nd January 1958 at Aurangabad. The abstract of it is published in the newspaper Marathwada, dated 5th January 1958. It is marked as Ex. P-27. The Chief Minister Shri Yeshwant Rao Chawan had been to Aurangabad on 2nd January where he delivered a speech in the Congress workers meeting. He told in his speech that this Jalna seat had been kept reserved for a Muslim Congress candidate. But Samiti proposed a Maratha candidate so the Congress party proposed Shri Baba Saheb Sawnekar. In the speech Shri Chawan specifically urged the Muslims as not to be annoyed by not setting up a Muslim candidate and appealed them to cast their votes to Sawnekar and should express their confidence and faith in the Congress. P.W. 13, the Editor of the newspaper states that he published Ex. P-27 according to the information received by him and it is correct. He states that Shri Yeshwant Rao Chawan, the Chief Minister of Bombay, during his visit to Aurangabad had appealed to the Muslim workers of Congress to work for Sawnekar and forget that the Muslim candidate should have been set up for the Jalna Parliamentary seat. He states further that he received this information through his staff reporter. He published this news report after verifying it from some of the responsible Congress workers, who had met at the time of the visit of the Chief Minister. He had the oral discussion with Congress responsible workers in respect of news report stated above.

137. In the Editorial of the newspaper, Maratha, dated 3rd February 1958, Shri Atre has observed that Shri Yeshwantrao Chawan while speaking about the bye-election and nomination of Baba Saheb Sawnekar as the candidate told that in fact this seat had been kept reserved for a Muslim candidate but as Samiti proposed a Maratha candidate so the Congress proposed the name of Baba Saheb Sawnekar.

138. The petitioner has not proved that the Hon'ble the Chief Minister or the Congress party had contradicted these news items. It is apparent from these news items that the name of Baba Saheb Sawnekar had been set up against the desire of Muslims and they were not content with the candidate set up by the Congress party and decided as not to vote to any candidate. The Muslim had not decided as not to vote any candidate due to the pamphlet Ex. P-1 or Atre's speech.

139. Late Tayabji was the Congress candidate for the Parliament and Rustomji was the Congress candidate for L.A. in the General Election of 1957. The canvassing was done for both the candidates simultaneously. Rustomji is an educated good charactered person. He is called Rishi Baba in Jalna. He is resident of Jalna while late Tayabji was not the resident of Jalna. In spite of all these facts in town Jalna on 1 to 21 booths Rustomji secured 6,029 votes while late Tayabji secured 7,793 votes. In other words late Tayabji had secured 1,764 more votes than Rustomji simply because he was a Muslim. There is no other explanation to it. Rustomji had secured 6,029 votes while Baba Saheb Sawnekar secured 5,624 votes at the polling booths of Town Jalna. There is only a difference of 405 votes and that too is due to the accidental death of a prominent Marawadi on the polling day. The difference of votes obtained by Rustomji and late Tayabji clearly shows the communal mentality of the voters and it cannot be said that Ex. P-1 had prejudiced the minds of the Muslims and they refrained from voting due to it. I have already stated that Hon'ble the Chief Minister had realised that the Muslims at large were not pleased by the set up of Baba Saheb Sawnekar as Congress candidate. He had appealed the Muslim workers as not to be annoyed and show their confidence and faith in the Congress organisation.

140. The learned counsel for the petitioner relied on Exs. P-153 and P-154. Ex. P-153 is the news item and Ex. P-154 is the editorial. They are not proved according to law. The non-petitioner has admitted only in his statement the heading of the news item Ex. P-153 that the Samiti has hopes of its success in Jalna election. He has not admitted the news item that no Muslim voter turned out to vote for the Congress candidate as one Urdu pamphlet had been distributed in town Jalna. In the same way the non-petitioner has admitted only the portions A and C of Ex. P-154 to be correct, while he has stated that the portion marked 'B' is baseless and incorrect. He showed his ignorance about the portions marked D and E. The portion marked A relates to the fact that late Saif Tayabji had defeated Samiti candidate Barrister Khobragade by 30 to 40 thousand votes. The portion B reads as below:—

"The reason of the above said success of late Tayabji was that out of three lakhs total voters in this constituency (Jalna constituency) nearly one lakh voters are Muslims. The Muslims of Hyderabad State are afraid of Congress Government after Police Action and passing the days by pleasing the party in power. As such the Muslims of this constituency have become the dolls in the hands of the Congress. The Congress had won the election with the help of such sort of capital."

141. The non-petitioner has denied its correctness and stated that it is false and baseless that the Muslims are one lakh in the parliamentary Jalna constituency and they are the dolls in the hands of the Congress party. It was therefore for the petitioner to prove this fact.

142. The non-petitioner has stated that he has no knowledge about the facts mentioned in the portions marked D and E. They read as below:—

"Baba Saheb Sawnekar has educated himself only upto Vth or VIth standard. In other words he is illiterate. Besides his moral character is a subject of laugh and joke for Marathwada people. At the time of Police Action, two helpless young girls had come to him for shelter and safety. They are still with him. This is known to all. Many pamphlets were printed and distributed about this matter. Even Shri Yeshwant Chawan knows this fact."

The relevant portion 'E' reads as below:—

"While speaking about this by-election and nomination of Baba Saheb Sawnekar as candidate Shri Yeshwantrao Chawan told that in fact this seat was kept reserved for a Muslim candidate, but Samiti proposed a Maratha candidate and therefore the Congress also proposed

a Marhata candidate. Though Baba Saheb Sawnekar is Marhata he considers him a Muslim with one view." "In what sense he calls him a Muslim is needless to explain. The Muslim voters of Jalna Constituency perfectly know this secret of Baba Saheb's character. Very few Muslims were present at the polling booth."

143. The non-petitioner has showed his ignorance. It was therefore on the petitioner to prove that the Muslims refrained from voting due to the pamphlet Ex. P-1. The petitioner should have examined Shri Atrc. He would have explained as on what information he had stated that in the Jalna parliamentary constituency there had been one lakh Muslim voters out of 3 lakhs voters and very few Muslims have gone to vote. It is the personal view of Shri Atrc. The tribunal cannot hold on such editorials that the Muslims refrained from voting due to distribution of Urdu pamphlet Ex. P-1 and the election result of the non-petitioner was materially affected by it. As stated above the figures show that the Muslims refrained from voting under communal mentality.

144. The non-petitioner has proved that one prominent Marwadi had died on the polling day, Gangadhar, D.W. 2 and Uttam Chand, D.W. 5 have stated that Kundanmal's brother Deepchand had died on the polling day. Kundanmal Seth is the member of the merchant association and prominent man in Jalna. Most of the Marwadis had attended the funeral ceremony. It affected the election of the petitioner.

145. No doubt it is a difficult job for the petitioner to prove that the result of election was materially affected by the distribution of a defamatory statement but as the law stands it is the duty of the petitioner to establish the same beyond reasonable doubt by strong and cogent evidence which he failed. The Tribunal cannot hold on suppositions and assumptions however strong they may be that the election result was materially affected. I held that the distribution of Ex. P-1 had not materially affected the result of the election of the non-petitioner and the election cannot be declared void under section 100(1)(d)(2) of the R.P. Act.

Is the statement false and whether the non-petitioner believed it to be false or did not believe to be true?

146. I have held that Ex. P-1 was neither published nor distributed by the non-petitioner nor his election agent nor any person with their consent. I have also held that the circulation of Ex. P-1 has not materially affected the result of the election of the non-petitioner and the Muslim did not refrain from voting due to its distribution and so it is not necessary for me to give finding on the point as to whether the statement noted in Ex. P-1 relating to the petitioner's character is false and the non-petitioner had reasons to believe it to be false or had no reason for believing it to be true. But as it is a party case, the petitioner may go in appeal and the High Court may take a different view from the evidence what I have taken, so it is better to give finding on this point also.

147. The petitioner has alleged in the petition that the statement noted in the pamphlet Ex. P-1 about his personal character is false and the non-petitioner had never believed it to be true. The non-petitioner has denied the petitioner's contention. The burden of proof is on the petitioner to prove beyond reasonable doubt that:

- (1) the statement was false, and
- (2) the non-petitioner believed it
  - (a) to be false, or
  - (b) did not believe it to be true.

148. The petitioner did not challenge the correctness of the pamphlet Ex. P-1 when he received it in the meeting while he was delivering the speech. It was the first occasion for him to challenge its correctness. He kept quiet though he delivered the speech for 10 to 15 minutes more even after receiving it. An inference can be drawn that there might be some truth in it, due to which he did not dare to contradict.

149. Anant Bhale Rao, P.W. 13 states that he had received one letter in 1951 which he published in the newspaper Marathwada. It was a complaint against the petitioner that he had kept some ladies of minority community in his house who had come for shelter to the Congress office at Hingoli. The petitioner had not the courage of boldly denying the same when the question was put to him

in this regard in cross examination, but he simply replied that he did not remember whether any such news had been published in the newspaper. Another news item was published in the Maruthwada, dated 5th January 1958 (Ex. P-27) that the Chief Minister Shri Yeshwant Rao Chawan in his speech delivered on 2nd January in the workers meeting, held at Aurangabad, had spoken that the Muslims should not be annoyed and appealed the Muslim workers to work for Baba Saheb Sawnekar saying that he considers Baba Saheb as a *Muslim with one view*. The same news is again published in another paper Maratha (Ex. P-154, portion E). There is no contradiction or explanation as in what sense Shri Yeshwant Rao Chawan had used these words in his speech for the petitioner.

150. It is difficult to have direct evidence against the petitioner as he being a responsible Congress office bearer. In spite of this difficulty the non-petitioner has examined several witnesses. Out of them the important and independent witness is Shri Digambar Rao Bindoo (D.W. 67). He was the Home Minister of Hyderabad State from 1952 to 1st November 1956. He states that he had received one complaint against Baba Saheb Sawnekar in the year 1953 or 1954, from some persons of Kalamnuri and Hingoli. Some criminal charges had been alleged against him. Shri Umrao Singh Thakur had come along with them. He ordered to make enquiry in it through C.I.D. Inspector. He received the enquiry report and it was confidentially sent to the Chief Minister Shri B. Ram Kishan Rao. I see no reason as to why he will speak lie against the petitioner. The petitioner did not dare to ask him as to what was the report of the confidential enquiry. The non-petitioner had put questions to the petitioner in cross examination that the Muslims of Hingoli had complained to Shri Bindoo that he (the petitioner) had kept two or three Muslim ladies in his house and Shri Chitnis had made enquiry in it. The petitioner is not bold enough to deny this fact. He simply showed his ignorance.

151. The other independent witness of the non-petitioner is Shri Thakur Omrao Singh (D.W. 96) who states that after the General Election of 1951-52 Shri B. Ram Kishan Rao was the Chief Minister and Shri Digambar Rao Bindoo was the Home Minister of the Hyderabad State. One Abdur Rehman, M.L.A. from Malk Pet constituency, Hyderabad had brought near him some complaints from Kalamnuri and Hingoli who had a complaint against Baba Saheb Sawnekar. They had one application with them. It was written in Urdu. Two or three out of them were Harijan and 2 or 3 were Muslims. He translated the application in English and enclosed it with the Urdu application and submitted the same before Shri Digambar Rao Bindoo taking the complainants along with him to his residential house. The charges against Baba Saheb were that:—

- (a) he occupied illegally the lands of the Municipality,
- (b) black marketed the cement,
- (c) oppressed the Harijans, and
- (d) he kept 2 or 3 Muslim ladies in his house after Police Action who were in helpless condition.

He states further that it was mentioned in the application that one Muslim lady was in his house situated at Malak Pet. Shri Digambar Rao Bindoo assured him that he would make enquiry in it. Shri Chitnis, the Circle Inspector, C.I.D. Branch was deputed to make enquiry in it. A copy of the complaint was forwarded to M.L.A., Hingoli constituency. He states further that he met again Shri Bindoo who told him that he had received the report from the C.I.D. Branch which is forwarded to the Chief Minister. In cross examination he states that Shri Bindoo did not tell him as to what was the report of the C.I.D., Circle Inspector, but it should be in favour of the complainants otherwise he (Bindoo) would have told him as to why he had submitted a false complaint against Baba Saheb, the general secretary of the Hyderabad Pradesh Congress Committee. He further states that he did not publish the complaint in his newspaper as it was against a responsible office bearer of the Congress party and the matter was under enquiry.

I see no reason to disbelieve his statement as Shri Bindoo has stated that this witness had brought the complaints and had presented the complaint to him. *He is a disinterested person.* There is nothing on record to show that he has any grudge against Baba Saheb or had any interest with the non-petitioner to depose lie on oath. The Pairokari is not his profession. He has stated that he is taking Government contracts since 1956 and before that he was running newspaper *Veer Bharti* and he owned one press. He has stated that he might

have presented 7 or 8 complaints in all before Shri Bindoo, Shri B. Ram Kishan Rao and Shri Vinayak Rao during 1952—56 when they were ministers.

The last portion of his statement which he has deposed of his own accord also does not negative the fact that the complaint had been submitted to Shri Bindoo against Shri Baba Saheb Sawnekar stating he had committed atrocities on the minority communities and kept two or three Muslim ladies in his house. He has stated that it appeared from their (complainants') talk that Baba Saheb being of bad character should not have occupied the responsible post of General Secretary in the Congress organisation. It is his own inference. Whatever may be the object of the complainants, but they had complained to Shri Digamber Rao Bindoo against Baba Saheb Sawnekar for his atrocities and illegal acts, as stated by Thakur Umrav Singh. The complainants were *mangs*, *dheds* of village Sawana and the Muslims of Hingoli.

152. Sham Rao Naik (D.W. 87) states that he knows Baba Saheb Sawnekar since the time of Police Action. In the 1st General Election he was the candidate of Peasants and Workers party from Hingoli-Kalamnuri L.A. double member constituency. Baba Saheb Sawnekar was the Congress candidate. He (the deponent) was elected. While he was attending the Legislative Assembly Sessions in 1952, he received one telegram from Mahars of Sawana village about the atrocities and illegal acts of Baba Saheb and his family members. Madhorao Nillikar also had received the telegram. He went to village Sawana and Hingoli. Later on in the year 1953-54 he received the memorandum by post on behalf of Muslims and Mahars from Kalamnuri and Hingoli wherein there were certain charges against Baba Saheb. The original complaint was addressed to the Home Minister and the copy was given to him. He states further that the charges were as far as he remembers that Baba Saheb kept Muslim ladies in his house and oppressed the Mahars of village Sawana. There was another charge on him that he illegally occupied the Government lands. On receiving the copy of the complaint he met Shri Bindoo and represented the case to him, who told that he had already passed the order for enquiry to C.I.D. Police Circle Inspector. About a month after his return to Hingoli from Hyderabad Shri Chitnis, the Circle Inspector of C.I.D. Police met him at Hingoli. He gave the necessary information to him. He states further that just after Police Action he was in the Congress organisation and at that time some Muslim ladies who were in helpless condition had come to the Congress office. Some of them were taken by their relatives. Baba Saheb Sawnekar selected 2 or 3 out of them and took them to village Sawana. Two of them were related to Abdul Rasheed, Vakil of Hingoli and one was the daughter of Sayeed Chavoo who was killed in the Police Action. He states further that he did not like the act of Baba Saheb Sawnekar as it was not suitable for him as a social and political worker. He had put the questions in the assembly but the questions relating to the personal character of Baba Saheb were disallowed. He states further that still two Muslim ladies are in Baba Saheb's house. His residential house is at the road. He saw several times one lady standing in the veranda of his house. Once it so happened that he was going to the court along with Shri Shivaji Rao the son-in-law of Baba Saheb and seeing one woman standing in the veranda of Baba Saheb's house he (Shivaji Rao) told in humorous tone that she is the kept Muslim woman of his father-in-law. In cross examination he has stated that it was the common rumour at Hingoli that Baba Saheb had kept Muslim ladies in his house. He states that he heard that the daughter of the Shavoo is still in the house of Baba Saheb. He states frankly that in the criminal proceeding started against him he had requested the court as to prohibit Shri Shivaji Rao from conducting the case as it was a challan case. The objection being reasonable, so Shri Shivaji Rao was prohibited to conduct the case and the P.P.O. was directed to conduct it. I see nothing particular to disbelieve his statement. He being the resident of Hingoli and the M.L.A. from Hingoli and Kalamnuri constituency might have received the copy of the complaint. It cannot be disbelieved as it is corroborated by the statement of Thakur Umrav Singh. It is possible that he might have stated some facts with exaggeration, but his statement cannot be totally false. The witness has stated the same facts which had been stated by Thakur Umrav Singh in his statement. Mere political differences are insufficient to disbelieve his statement. He has no personal grudge with the petitioner.

153. Vithal Rao Devidas Rao (D.W. 69) has stated that Shri Sham Rao Naik had told him that the Muslims of Hingoli and Kalamnuri Taluqas had submitted one memorandum in 1953 to the Home Minister levelling criminal charges against Baba Saheb and he had told him also that it had been written in it that Baba Saheb had misbehaved the ladies of minority community. This witness states further in cross examination that he had heard from number of people that Baba

*Saheb had kept Muslim ladies in his house, after Police Action. He heard it from Shri Waman Rao the brother of Baba Saheb and from several other Congress members.*

154. Mir Tilawat Ali, D.W. 66 states that in 1952-53 the Muslims of Hingoli had forwarded one memorandum to Hyderabad Government complaining about Baba Saheb Sawanekar. A copy of it was given to Sham Rao Naik, who read it in the District Meeting of the Peasants and Workers party, held at Parbhani. Sham Rao Naik was directed to represent the same to the Government as he was the M.L.A. from that constituency.

155. Mir Hashim Ali, D.W. 63 states that in one meeting of Peasants and Workers party held at Parbhani in the year 1953-54 Shri Sham Rao Naik the then M.L.A. had read one complaint memorandum which was submitted by the Muslims of Hingoli to Shri D. G. Bindoo the then Home Minister of Hyderabad State and the copy of it was given to him. He states further that it was complained that Baba Saheb had oppressed the minority community and that he had taken illegal possession of the Government lands. He had taken the undue advantage of his position. The party directed Sham Rao Naik to represent the complaint to the Government.

156. Bhujang Rao, D.W. 31 states that he has no personal knowledge about Baba Saheb's character, but in the party meeting held at Parbhani in 1953-54 Shri Sham Rao Naik the M.L.A. of Hyderabad State from Hingoli and Kalamnuri constituency had read the copy of the complaint memorandum made against Baba Saheb Sawanekar about his atrocities by the Muslims of Kalamnuri and Hingoli to Shri Digambar Rao Bindoo and it was decided by the members that Shri Sham Rao Naik should do the needful after enquiring it. No doubt he is the member of the Samiti and had worked for the non-petitioner in the parliamentary bye-election but it cannot be said that he deposed utterly false to favour the non-petitioner. His statement is well corroborated by the statements of Mir Tilawat Ali, Hashim Ali, and Sham Rao Naik that the copy of the complaint was read in the meeting which was made to Shri Digambar Rao Bindoo and the copy of which had been given to Sham Rao Naik. He honestly stated that he did not know personally about the character of Baba Saheb. If he had the intention to favour the non-petitioner it was easy for him to falsely depose that Baba Saheb is of bad character and he had kept the ladies of minority community in his house and committed atrocities on the minority community after Police Action. He is a pleader, knows the significance of oath so he deposed only true facts which he knew. I see no reason to disbelieve his statement.

In reply to court questions he states that he was the member of the Legislative Assembly in 1952. The question was put in the L.A. about the atrocities of Baba Saheb. The concerned minister had given reply to it. He states further that enquiry was made in the complaint by C.I.D. Police, but he does not know the result of the enquiry.

157. Mohd Iqbaluddin, D.W. 29 states that in 1953-54 the Muslims of Hingoli and Kalamnuri had made the representation to Shri Digambar Rao Bindoo that after Police Action Shri Baba Saheb Sawanekar had kept in his house one Muslim girl of Kalamnuri and two Muslim girls of Hingoli. One of them is the wife of Abdul Rasheed, Vakil, resident of Hingoli who had gone to Pakistan. The second Muslim lady is the sister of Abdul Rasheed. The third Muslim lady is the daughter of one Arab. She is at Hyderabad. A Resolution was passed in the meeting of District workers of Peasants and Workers party. The matter had been put by Sham Rao Naik, Advocate of Hingoli to whom a copy of it had been given as he was the M.L.A. from Hingoli and Kalamnuri double constituency. C.I.D. Police had enquired at the order of Shri Digambar Rao Bindoo. In cross examination he states that he had also inquired and found it to be correct. He advised Abdul Nabi, the brother of Abdul Rasheed for taking legal action under section 552, Cr.P.C., but as he was afraid of his service he did not take any legal steps. He has given evidence when he found the complaint to be true in his personal enquiry. I do not think that he being a Muslim would say false against the chastity of the Muslim ladies. His statement is believable, when it is corroborated by other witnesses.

158. It is argued that the memorandum was not filed. It was not an important document for keeping safely. The M.L.A. generally receive such complaints and they are destroyed by them after being represented to the concerned Government officer. In the instant case when the Home Minister told Shri Sham Rao Naik that he had ordered already for enquiry then it was not necessary for Sham Rao Naik to preserve it for 5 or 6 years particularly when he had no personal

grudge with the petitioner. It was not possible for the non-petitioner to produce the original complaint memorandum, so by non-production, no adverse inference can be drawn against him.

159. Hari Har Rao Deshmukh, Pleader, D.W. 23 states that he was at Hyderabad since 1951 to 1956 for studies. He had read in the newspaper either in "Angaara" or "Hamara Iqdam" that the questions were raised in the Legislative Assembly about Baba Saheb Sawanekar. He had read it that Baba Saheb had oppressed some Muslims and Mahars and had occupied their houses and lands. He states further that he does not remember the details of what he had read. It was published in the year 1953.

I see no reason to disbelieve his statement as Shri Sham Rao Naik has stated in his statement that he had tabled the questions in the Assembly about Baba Saheb. Besides Laxman Mahar has stated that the Mahars and Muslims had complained about Baba Saheb Sawanekar and his family members. His statement is well corroborated by other witnesses.

160. Syed Iftekhhar Ahmed, D.W. 36 states that at Kalamnuri, Hingoli and Parbhani it is commonly known to the public that Baba Saheb Sawanekar is of bad character and committed atrocities on the Muslims and others after Police Action. He started collecting money after Police Action by threatenings and illegal means. He took possession of the Government lands illegally and kept helpless ladies in his house.

In cross examination he states that he heard about the atrocities of Baba Saheb Sawanekar in the house of Hashim Ali, Pleader at Parbhani. Shri Yasin Khan, Pleader told about the bad character and atrocities of Baba Saheb Sawanekar. Shri Tilawat Ali and Shri Imamuddin Yakini were also present at that time.

His statement is well supported by the statements of Hashim Ali and Mir Tilawat Ali. It cannot be said that he deposed false facts to favour the non-petitioner.

161. Salar Khan (D.W. 26), resident of Jintoor states that *he is a pensioner and he has no concern with any party*. He heard at Parbhani and particularly at Hingoli that Baba Saheb oppressed the Muslims and kept Muslim ladies in his house. In cross examination he states that his sister's son Sherulla had told him that he had seen personally two Muslim ladies at Hingoli in Baba Saheb's house. Sherulla Khan has died about a year back.

He is a disinterested person and a pensioner. I see no reason as to why he will depose false against Baba Saheb's character to favour the non-petitioner. It appears from his statement that he has deposed what he had heard from his sister's son Sherulla Khan.

162. Namdeo, D.W. 25, resident of Bori states that his relatives reside at Narsi which is 8 miles from Hingoli. His mother's sister's son Sadoo told him about Baba Saheb Sawanekar that he had oppressed the Muslims and Mahars. He heard at Sawana 5 or 6 years back that Baba Saheb has kept Muslim ladies in his house.

His statement cannot be disbelieved as the Mahars and Muslims had complained to Shri Digamber Rao Bindoo. He heard it at the time when the complaint was made to Shri Bindoo.

163. Taj Mohd, resident of Bori, D.W. 24 states that he has no concern with any party. At the time of Jalna parliamentary bye-election Shri Abdul Rahman Khan and Shri Yaseen Khan had called the group meeting at the house of Mohd Yousuf, Chaprasi. Twenty or twenty-five persons had gathered in the meeting. Abdul Hamid Kachi on their appeal objected saying that Baba Saheb oppressed the Muslims and poor Dheds of Hingoli. Shri Abdul Rahman Khan and Yaseen Khan told the Muslims to forget the past acts of Baba Saheb Sawanekar and appealed them to vote for the petitioner as it would be beneficial to them.

I see no reason to disbelieve his statement as he has very frankly stated that he has no personal knowledge about Baba Saheb's character. Whatever he had heard from Abdul Hamid Kachi about Baba Saheb may not be false as one complaint had been submitted by Dheds of village Sawna and Muslims of Hingoli and Kalamnuri to Shri Digamber Rao Bindoo about the atrocities of Shri Baba Saheb Sawanekar on the minority communities. Besides his statement is well corroborated by the statement of Mohd Easa, D.W. 21 who was also present in that group meeting.

164. Jagarao, D.W. 15 states that he was the active member of the Congress and had canvassed for the petitioner in the Jalna parliamentary bye-election at proper Partur and some villages of Partur particularly Mantha. He canvassed door to door for the petitioner but the public in general told him that they had no complaint about the Congress organisation, but the candidate was not suitable. They further told him that he being a new comer to Partur does not know about the oppressions of Baba Saheb. If he (the deponent) knew the oppressions of Baba Saheb he would not have canvassed for him. He states further that he brought this fact to the notice of Shri Devi Singh Chawan who had called the group meeting. *In reply he (Shri Devi Singh Chawan) told that he knew it but the workers should convince the voters to vote for him as the candidate could not be changed at the last stage.*

165. Ahmed Khan (D.W. 14), resident of Partur states that his Kirana shop is beneath the mosque of Chowk. One group meeting was called by Shri Kazi Gayasuddin in the school attached to the mosque Shri Kazi Gayasuddin appealed the audience to vote to the Congress candidate. He (Shri Kazi Gayasuddin) told that he had come to know at Partur that the public had no good opinion about the character of Shri Baba Saheb Sawanekar but the Muslims should not take it into consideration and vote the Congress candidate. He states further that one other group meeting had held in his mohalla wherein the Congress workers as usual appealed the audience to vote for the petitioner. The Muslims told in it to the Congress workers that the Congress candidate (the petitioner) was the oppressor and of loose character. He had kept Muslim ladies in his house. The Congress workers told that they should not look to the candidate but they should vote to him keeping in view the Congress organisation. His statement is well corroborated by the statement of witness Mohd Yousuf (D.W. 13).

166. Nizamuddin, D.W. 12 states that he had worked for the petitioner in the bye-election. His work was appreciated and Shri Abdur Rahman Khan, the District Congress Secretary gave him one appreciation letter Ex. D-99. He states further that Shri Qazi Gayasuddin had visited Partur, few days before the poll and delivered his speech in the religious school. It was Friday. He said that he was sitting in a holy place on a holy day and he would speak the true facts. He spoke that the Congress party being the ruling party one should vote the Congress candidate to strengthen the hands of Pandit Jawaharlal Nehru. He had also spoken that one should not compare the candidate at the time of voting but one should see the party. He appealed the Muslims to vote Baba Saheb Sawanekar irrespective of his private personality. He further states that he received information from the respectable persons about the loose character and bad behaviour of Baba Saheb. He states also that when the workers went to canvass for Baba Saheb the people told them as to how they can vote for him. The workers told them to forget the past incidents.

I see no reason to disbelieve his statement. He has stated that Nooruddin was the Congress candidate for the Vice-Chairmanship of the Town Committee and the deponent had stood as an independent candidate and he was elected. He states that Narsing Rao Nandapurker and Shri Yaseen Khan, Pleaders had come for enquiry. He says that he has not given resignation from the Congress party. If he had been expelled from the Congress party then Shri Abdur Rahman Khan would not have given him the letter, appreciating his work.

167. Laxman, Mahar, resident of Sawana (D.W. 76) states that the Mahars of Sawana had complained about Baba Saheb and his brother Dat Rao. Baba Saheb used to beat Mahars. He had violated the chastity of Pando's wife. Dat Rao had asked to demolish the house which he had constructed on his ancestral plot. His son was the employee near Baba Saheb, so he used to go to his house to take bread for him. He came to know that there was one Muslim lady in the house of Baba Saheb.

168. Rama, Mahar, resident of Sawana (D.W. 80) states that he knows Baba Saheb of his village the petitioner. He has four brothers. Khande Rao has died Dat Rao, Ram Rao and Sunder Rao are alive. The Mahars of village Sawana had complained against Baba and his brother Dat Rao about their atrocities. He states that he and other Mahars had gone to the house of Baba Saheb and complained to him about his atrocities and of his brother and asked him as to where they should go for redress if he would outrage the modesty of their ladies. He states further that they asked him (the petitioner) that it was not proper for him to call Chandri at his house. Their relatives have stopped coming to their houses. Chandri is the wife of his cousin Pandoo. The petitioner and his brothers had stopped their movement in the village and grazing of their cattles. He states further that the Mahar had wired Nirbhikhar, and Sham Rao



Naik who were elected M.L.As. from Hingoli. They represented their case to D.S.P. Baba Saheb is the Mali Patel of village Sawana. He was the menial servant near the petitioner so he came to know that one Muslim lady was in his (the petitioner's) house. He had a talk with her who told him that her husband was the pleader at Hingoli who had been murdered in the Police Action, so Baba Saheb brought her and kept her in his house and she started weeping.

The witness is the resident of village Sawana and he was the menial servant near the petitioner, so he had the occasions of going inside the house of the petitioner and of knowing as to who were living with Baba Saheb in his house. In cross examination he has stated that Geeta Bai is one sister of Baba Saheb who is married at Gava. Baba Saheb has 3 daughters. Shri Shivaji Rao is the son-in-law of Baba Saheb. He stated the oppression which he had suffered. He has frankly admitted that Baba Saheb's brother Khanderao was of good character. He did not oppress them. Sunder Rao also had not oppressed them. Ram Rao was employed at Basam. He also had not oppressed the Mahars. His statement is believable as per human psychology no person would like to depose anything false which would effect upon the chastity and character of his own female relatives.

169. It appears from the statements of the above stated D.Ws. that there was a complaint against Baba Saheb Sawnekar that he had oppressed the minority community and had kept Muslim ladies in his house after Police Action. It can be said that the statement noted in the pamphlet was not false.

170. The petitioner has examined Shri Bhagwant Rao Gadhe, P.W. 55, Shri Vijindra Kabra, P.W. 7 and Rangnath Bangale, P.W. 57 to prove that the statement noted in the pamphlet Ex. P-1 about his personal character is false. No doubt Shri Bhagwant Rao Gadhe has stated that he is associated with the petitioner for the last 20 years, and he had challenged the persons, who were present in the meeting, wherein the pamphlet Ex. P-1 was distributed, to come forward and prove the contents of it to be true and correct, but his long association with the petitioner was only as a political worker, but he has no knowledge of his private life. He has stated that he had gone to village Sawana only once for 4 hours before the Re-organisation of States in 1956. He further states that he went to the petitioner's house several times at Hyderabad when he was the General Secretary and residing there with family. It is a fact that the ladies of the petitioner observe *parda*. It is not said by Shri Bhagwant Rao Gadhe that the ladies of the petitioner did not observe *parda* with him and he had the occasions to see his female family members. It cannot be said that he had the personal knowledge as to who else live in his house.

Shri Vijindra Kabra, P.W. 7 has stated that in the meeting he had challenged the statement made in the pamphlet Ex. P-1 about the character of Baba Saheb, to be absolutely false. He neither harassed the minority communities nor he took undue advantage of the circumstances. Contrary to it he protected the minority communities. The allegations that he kept Muslim ladies in his house is absolutely false and untrue. His statement is insufficient to hold that the statement noted in the pamphlet about Baba Saheb is false. He joined the Congress only in the month of September 1957. Before that he was the member of the Samiti. He has not stated in his statement that he ever went to Sawana or to the house of the petitioner. It appears from his statement that what ever he had spoken in the meeting in contradiction to the pamphlet had been told on the information given to him by Baba Saheb Sawanekar. He has no personal knowledge about the incorrectness of the pamphlet. He states that Ex. P-1 was handed over to the petitioner by some Congress worker and he handed over the same to him (deponent). The petitioner explained to him the facts and he (deponent) cleared the facts in his speech. The petitioner had not the courage to deny it openly. He kept quiet on receiving the pamphlet.

The other witness is Rangnath Bangale, P.W. 57. He is the only witness who has stated that he knows Baba Saheb Sawanekar since his age of 15 or 16 years. He is associated with him in political affairs since 1938. From the time of his acquaintance he had not seen nor heard that he oppressed the Muslims or kept Muslim ladies in his house. He states that he had gone inside his house but he had not seen any Muslim lady. No doubt he has stated that he had gone several times inside the house of the petitioner but he has not stated as to whether he had gone inside his house before Police Action or after Police Action. He admits that the ladies of the petitioner observe *parda* with him. He is the resident of Aundha and does the contracting business at Partur, since Jagir days, while the petitioner is the resident of Sawana. The villages are at

two extreme corners of Taluqa. Hingoli. It is not convincing that he would have gone inside the house of Baba Saheb. As already stated that he is a tutored witness and he has deposed to favour the petitioner. His name is not in the original list of witnesses. Besides on receiving the pamphlet he did not contradict the contents of the pamphlet. He did not inform the Congress office nor the police. It can be informed from his conduct that he did not contradict or inform the police or the Congress office as he knew the contents of Ex. P-1 to be true.

171. The best evidence could be of the relatives or of the servants who had the occasions of going inside the house and seeing the ladies, residing in the house of the petitioner. The petitioner examined Shivaji Rao (P. W. 61). He is the son in law of the petitioner. He has the opportunities of going inside the house. He can say very well as to who live in the house of the petitioner, but it is strange to note that not a single question was asked to him in this connection. He did not say a word that the statement noted in Ex. P.—1 is false, though he has given a very long statement of eighteen typed pages. It appears that Shivaji Rao was aware as stated by Sham Rao Naik in his statement that his father in law had kept a muslim lady in his house, and there was apprehension that he might disclose the truth on oath, being an advocate so no question was asked to him in this regard.

172. The petitioner has utterly failed to establish that the statement made about him in Ex: P.—1 is false. The non-petitioner has proved the statement made in Ex: P-1 to be true from a strong and convincing evidence. But assume for arguments sake that the statement is false even then as the law stands it is on the petitioner to prove that the non-petitioner believed it to be false. The petitioner has examined only Ram Rao Awargaonker (P. W. 68) who has stated that at the time of drafting he told Ankush Rao Ghare that it would not be proper to defame the petitioner by false allegations and in reply the non-petitioner told that he knew the allegation made against the petitioner to be false but in Election such false allegation could be made. I have already held that he deposed false on the promise of the congress party that he would be made Chair-man of the District Local Board Bhir and as appears from the record that he was subsequently made the Chairman of it. He stated against Samiti to take revenge from the party as he was not appointed Chairman of the D. L. B. Bhir while he was in the party and some other member Gyanoba was made the chair-man against his desire. His name is not in the list of witnesses. He resigned the Samiti and joined the congress just before his statement. On the statement of such one witness it cannot be said that the non-petitioner knew the allegation made against the petitioner in the pamphlet Ex: P-1 to be false or not to be true.

173. The non-petitioner himself has come in the witness box and has stated in reply to the court questions that the inhabitation of Hingoli and Kalamnuri had complained to Shri Bindoo the then Home Minister about Baba Saheb saying that:

- (1) he kept muslim ladies in his house,
- (2) he illegally occupied muslims lands and houses,
- (3) he committed certain atrocities on the Harijans,
- (4) he misused his position and illegally occupied Government lands,
- (5) he took money from the Government officers for their transfers.

He has stated that a copy of the complaint was given to Sham Rao Naik, Shri Bindoo had passed the order for enquiry. Shri Chitnis Sub-Inspector C. I. D. Police had enquired in it. He has stated in reply to further court questions that he does not consider the statement made in Ex: P-1 about the character of Baba Saheb to be a false one because the people had come and told him that their wives and female relatives were—kept by the petitioner in his house. No person will represent such facts falsely because every one has—regard and respect for his wife and female relatives. The matter was enquired through Shri Chitnis. He submitted his report. If the complaint was false Shri Bindoo would not have forwarded the report to the Chief Minister Shri B. Ram Kishan Rao as the complaint was made to him only. The fact of forwarding the report to Shri B. Ram-kishanrao shows that there was truth in the complaint. It is possible that the matter might have been hushed up as the petitioner was occupying a respectable post in the congress organisation and there was apprehension that it would affect the prestige of the organisation. I hold that the non-petitioner had reasons to believe it to be true or not to be false and the petitioner utterly failed to establish that the non-petitioner knew the statement to be false.

174. I hold that the non-petitioner or his election agent or any other person with their consent neither published nor distributed the pamphlet Ex: P-1 nor it was referred in the speeches by Shri Atre. The distribution of Ex: P-1 had not materially affected the result of the non-petitioner's election. I further hold that the non-petitioner had reasons to believe the contents of Ex: P-1 to be true or not to be false. I decide issues 6 and 7 against the petitioner and in favour of the non-petitioner.

*Objection No. 4 or Issue No. 8.*

175. The other allegation is that the non-petitioner engaged vehicles such as Tonga, Bullock Carts and Motor cars for carrying voters to the polling booths and from there to their respective houses in town Jalna, Ambad, Jintoor and in villages Watoor and Bhogaon.

176. The evidence adduced by the petitioner can be considered under the following sub-heads,

1. The non-petitioner engaged taxi car BYG 147 for taking muslim lady voters to the polling booths in Jalna town on the Polling Day.
2. The Tonga of Nandu and Hari were engaged by the non-petitioner for carrying Muslim lady voters to the polling Booths from Rajmahal and Darga areas of Jalna Town on the polling Day.
3. The hired bullock carts were used by the non-petitioner to carry voters of Bhogaon and Watoor Taluq: Partur.

177. It is alleged in the petition that the taxi motor bearing plate No. BYG 147 was used by the non-petitioner to carry muslim lady voters in Jalna Town and in the amplification the petitioner has mentioned that Aziz Munibi w/o Hafiz Khan, Jainabi w/o Mohd. Ismail residents of Block No. 30, Rabiyaabi w/o Shaikh Abbas resident of Block 62 and Ramzanbi w/o Jani Miyan resident of block 29, Jalna, were carried in the taxi car to the polling booth.

178. The petitioner has examined Bismilla Khan the owner of the taxi motor as P.W. 8 who states that his car had been engaged 15 days prior to the poll by Samiti workers for 15 or 17 days for election work on a hire of Rs. 15 per day. His car went out of order two days before the poll. He came to Jalna and from there he went to Jafferabad. The car got in order on the polling day. He and his son started from Jafferabad at about 11 or 12 A.M. and reached Jalna at 2 or 3 P.M. The voters were carried at Jalna in the cart to the polling booth. He did two trips to the polling booth at Girl's school from Murgi Talab Mahalla, 5 or 6 persons can sit in the car but he cannot say as to how many persons had sat in it. He cannot say whether they were males or females, because the curtains were put to the car and his son Hsrulla Khan had driven the car. He identified the receipts Ex. P.11 and Ex. P.12 to be the same receipt which were executed by his son. The receipts were not executed under coercion or undue influence. His son Nasrulla is alive.

179. The non-petitioner admits that Bismilla Khan's car was engaged by him, but he alleges that it was engaged on hire on 16th January, 1958, and it was used for election work in Jafferabad area. It went out of order. Bismilla Khan was paid till 31st January. In advance on 19th January, 1958 Rs. 180 were paid to his son and Rs. 45 were paid to him for 27th, 28th, 31st January. He executed the receipt for Rs. 45 on 4th February.

180. The non-petitioner has examined Dattatray Rao, Pleader (D.W. 38), who states that he was made in charge to work and canvass for the non-petitioner in Jafferabad area. He had gone to Jafferabad along with Udhav Rao Rangnathrao and Kondiba Patil on 29th January, 1958. Shri Pandit Roa Gavane and Shri Khushal Rao Mutale were already there. They had come in the hired car of Bismilla Khan, bearing plate No. BYG 147 from Aurangabad. He says further that after addressing Public meetings at Khasgaon and Tombori, he came again to Jafferabad on 1st February at about 10 A.M. and he remained there on the polling day. Bismilla Khan's taxi motor was lying out of order in front of Gulam Jan Khan's house at Jafferabad, it remained lying there on 2nd February also as it was not in working order. The polling booth was at 5 or 7 paces from the place where the car was lying out of order. The objection was taken at about 7 A.M. on its lying there as there was a poster of the non-petitioner pasted on it. The poster was removed. The car was repaired and brought to Jalna on 4th February. Bismilla Khan's son Nasrulla Khan had gone to bring necessary parts.

181. The non-petitioner has examined Khushal Rao Mutale, Pleader of Aurangabad also, who had worked in the bye-election and canvassed for the non-petitioner in Taluqa Ambad and Jafferabad Mahal. He reached Jafferabad on 24th January in the Taxi car of Bismilla Khan. He states further that he toured in it in Jafferabad Mahal till 20th January. After words it went out of order and so it was left at Jafferabad. At Jafferabad it remained lying in front of Gulam Jan Khan's house.

182. The petitioner has not examined Nasrulla Khan who had driven the car. The petitioner has not examined any one of the lady voters who had been taken in the car to the polling booth. Bismilla Khan's statement is insufficient to hold that his car was used for carrying voters on the day of polling particularly when it is contrary to the receipts passed by his son. It appears from Ex: P-11 that the Taxi car was engaged from 16th January, 1958 for fifteen days at the rate of Rs. 15 per day. He was given Rs. 150 It was the hire of 10 days ending on 26th January. His son passed another receipt of Rs. 45 Ex: P-12. It was the hire from 27th January to 31st January, but as the car had gone out of order on 29th January so he was paid only for 3 days. Bismilla Khan has stated that his son did not execute the receipts of under certain or undue influence. He executed the receipts his free will so there can be no reason as to why he would execute the false receipts. The petitioner's allegation that the car was used on the polling day for carrying voters to the polling booths is well rebutted by the documentary and oral evidence.

183. It does not appear from his statement as to who had directed him to take muslim lady voters to the booth. The hiring or procuring of vehicles is not in itself a corrupt practice, but to hire or procure a vehicle for conveyance of any elector to or from the polling booth is prohibited by law. The agreement with the non-petitioner had come to an end on 31st January, 1958 as proved by the non-petitioner.

184. The petitioner has further alleged that the tongas of Nandu and Hari were employed by the non-petitioner for carrying muslim lady voters from Rajmahal and Darga areas of Jalna Town on the polling day. In the amplification he has stated that Habib Bi w/o Shaik Mahboob, Muradbi w/o Mohd. Ismail and Hamidabi w/o Shaik Mahmood resident of ward No. 32 of Town Jalna had availed the tongas engaged by the non-petitioner, for going to the polling booth.

185. The petitioner has examined Nandoo and Hari, Tonga drivers as P.Ws. 3 and 4. Nandoo tonga driver states that Samiti party had engaged his tonga for two days. On Saturday the Loudspeaker was fixed on it and taken around the Jalna Town. On Sunday i.e., on the polling day he carried one Samiti worker from the Samiti office to old Jalna. He inspected there the polling work. He came from there and sat in the bungalow of Hafzji muslim and directed one Samiti worker to take the lady voters in the tonga. He states further that he took the lady voters in his tongas to the polling booths whom the Samiti workers had asked to put the ballot paper in the ballot box having the symbol on it of the Cart. He states that he received Rs. 10 for the election day and Rs. 5 for Saturday. One congress worker had stopped the tonga while he was carrying the lady voters to the polling booth Rehman Gunj and asked him (the deponent) as to whether he had taken the hire from the lady voters whom he had carried to the booth and in reply he said that the lady voters did not pay him as Samiti had engaged his tonga for carrying them and he would get the hire from the Samiti office.

In cross examination he states that the police constables were at the polling booth. There was one constable near the marked line where from nobody was permitted to go inside except the voters. The congress workers who had asked him was there till he carried the lady voters to the booth for the sixth time. He (the congress worker) did not threaten him as to why he brought the lady voters of Samiti in the tonga and he did not complain to the police constable about it in his presence. He does not know the lady voters whom he had carried in his tongas but they were muslims. He cannot say the names of the owners of the houses where from he had carried the muslims lady voters.

186. P.W. 4 is Hari, Tonga driver. He states that his tonga was engaged for 8 days by Narayan Rao Waghmare at the rate of five rupees per day. For seven days the loud-speaker was moved in Jalna town on it and on the 8th day i.e., on Sunday he worked as per instructions of the Samiti workers. He took his tonga at 6 A.M. to Samiti office. It was the polling day. The leaders of Samiti sat in it and he took them to the polling booths of Jalna town till 11-30 A.M. He does not know their names. The Samiti leaders at 11-30 went to Nathaba's galli which is

situated in Rahman Gunj. They got down and asked him to carry muslim lady voters to polling booth as per instructions of Samiti workers. He carried the muslim lady voters, 3 times to the polling booth at Rahman Gunj which was in the primary school till 4 p.m. He carried four muslim lady voters in a trip to the polling booth and brought them back to their respective houses. Their male family members were not present when he carried them in his tonga to the polling booth. He is unable to say the names of the male members of the lady voters whom he had carried. They did not pay the hire nor he demanded the hire from them. He received the hire charges from the Samiti office at 8-30 p.m. through Shri Narayanrao Waghmare. He received Rs. 40 for eight days. For Sunday he received Rs. 5. He executed the receipt. He identified his signature on the receipt marked Ex: P-9. His preliminary statement is contrary to the contents of the receipt. He told the truth in cross examination wherein he stated that his tonga was engaged from Saturday to Saturday for mobing the loudspeaker in the town pronouncing as to whose speech would be delivered on a particular day in the public meeting. It was also announced on the loudspeaker to give vote to Samiti as 105 people have shed their blood for the formation of Sanyukta Maharashtra with Bombay. *He states further that Samiti workers had no cars. They moved in the Tonga. The Samiti leaders did not leave his tonga for the whole day. They visited polling booths of Jalna and stayed at each booth for 5 to 10 minutes to see whether the polling work was carried out smoothly. The congress motor cars were moving in the town while he carried the lady voters to the booth.*

187. These statements are unreliable and it appears that they have deposed the tutored statements. Govind Rao P. W. 16 states that he was in charge of supervision of 17 polling booths of town Jalna and he did not receive any complaint on the day of the polling that the tongas or other vehicles were used by any party for carrying voters to the polling booths. About 15 days after the polling he received a confidential letter from the Dy. S. P. Office, Jalna Division to make inquiry as to whether any vehicle was used for carrying the voters. He inquired the police constables and Head Constables who were posted at the polling booths for management and other people but nobody told him except Janardhan constable that Samiti workers had engaged tongas or taxi car for carrying lady voters to the polling booths. The police constable Janardhan was posted on Rahman Gunj polling booth. He told him that one congress worker had orally complained to him that Samiti workers had brought parda-nashcen lady voters in hired tonga. He made the report of it to the presiding officer who asked him to produce the tonga driver and the lady voters who were brought in the tonga. He produced them before him. The witness states further that he recorded the statement of Janardhan which is marked as Ex. P-71 and he sent the report of inquiry to Dy. S. P. It is marked as Ex. P-70.

188. The petitioner has examined—Rameshwar resident of Sadar Bazar Jalna (P. W. 35) who states that he was the congress polling agent at the polling booth Rahman Gunj, Jalna 5. He had complained in writing to the presiding officer that the Samiti workers brought some lady voters in the tonga belonging to Nandoo and Hari. Samiti workers had brought lady voters five or six times like this in their tongas. The deponent identified his complaint marked as Ex. P-90. He states further that he does not know as to what action was taken by the presiding officer on it. The presiding officer was one Hindu. The Presiding officer neither inquired with the ladies who had come in the tonga nor the tongawala about the payment of hire charges in his presence. He states further that he was present there till 5 p.m. He is unable to say whether the presiding officer signed on the reverse of his complaint. The presiding officer did not make any inquiry on the complaint in his presence nor he asked him to sign on the reverse side of the complaint under his writing and he did not refuse to sign. The writing on the reverse is marked as Ex: D-68.

189. The non-petitioner has examined Ambadas (D.W. 8) in rebuttal. He was the polling agent of the non-petitioner on the polling booth No. 5 Rahman Gunj. He states that Radha Kishan Lala or Uttam Chand or any other worker of Samiti did not bring the lady voters in the hired conveyance. He further states that at about 1 p.m. the congress polling agent Shri Rameshwar (P. W. 35) had complained to the presiding officer that Samiti workers brought 2 lady voters in the tonga and paid the hire charges to the tongawala. The presiding officer asked him to submit the written complaint and he submitted it, which is marked as Ex: P-90. The presiding officer called the two lady voters and the tongawala and inquired them. He made a note of the inquiry on the reverse of it which is marked as Ex: D-68.

190. The non-petitioner examined Karimuddin (D.W. 89) who was the presiding officer in the Parliamentary Jalna bye-election at polling booth No. 5 Jalna

(Primary school, Rahman Gunj, Jalna). He states that one complaint petition was filed by the congress polling agent. Ex: P-90 is the same complaint. He made the enquiry wherein it was found baseless. He identified his signature on the report Ex: D-68.

191. Ex: D-68 totally frustrates the petitioner's allegation that the Samiti workers had engaged hired conveyance for carrying lady voters to the polling booth. The presiding officer was the Government Servant who had no interest whatever with any party. His inquiry note Ex: D-68 therefore has its own significance and I see no reason to disbelieve it.

192. Besides the non-petitioner has examined Uttam Chand (D. W. 6) who states that he or Radha Kishan Lal or any other Samiti worker had neither engaged the tongas nor taxi cars or bullock carts for carrying the lady voters from their houses to polling booth of Rahman Gunj or any other booth and for bringing back from there to their houses.

193. The petitioner has not examined Muradbi w/o Mohd. Ismail, Habib Bi w/o Sheik Mahboob and Hamida Bi w/o Sheik Mahmood who are alleged to have been taken to the polling booth by the Samiti workers in the hired tonga. Contrary to this the non-petitioner has examined Mohd. Ismail (D. W. 6) who has stated that Habib Bi is his aunt and she is the wife of Shaik Mahboob. Hamida-bi is his cousin sister, the daughter of Shaik Mahboob. The ladies of his family and of his uncle's family went to the polling booth walking as it was only at 50 paces from his house. The tonga or any other conveyance had not come in his mohalla to take the lady voters to the polling booth. He further states that he was the polling agent for the non-petitioner at the polling booth No. 5 Rahman Gunj. He did not see Uttam Chand or Radha Kishan Lal or any other Samiti worker bringing lady voters in hired tonga or other conveyance while he was at the polling booth. He was at the polling booth from 7-30 A.M. to 9-30 A.M. and then from 11 A.M. to 2-30 P.M.

194. Syed Hussain alias Miyan (D. W. 7) states that the Samiti workers did not bring the lady voters in hired conveyances. He is a congress worker. He had worked for the congress candidate in three Elections i.e., in the General Election of 1957, in the Jalna Parliamentary bye-election and in the Municipal Election. He is a four annas congress member. I see no reason to disbelieve his statement. The learned counsel for the petitioner pressed that his name appears on the Pamphlet published by the Samiti at the time of Municipal Election but he has given explanation for it that his name was printed on it without his consent.

195. The non-petitioner has examined Manohar Rao, a social worker (D.W. 9) who states that he or other members of the Socialist party had not participated in the bye-election. He is well acquainted with the political leaders of all the parties of City Jalna. Shri V. K. Verma, the prominent leader of Socialist party had been to Jalna on 2nd February 1958. Shri V. K. Verma along with the deponent and some other Socialist workers moved in Town Jalna to see the atmosphere of the election. He states further that the congress leaders Shiva Bhai Patil, Rustomji M.L.A. Jalna Kamle, Kaka Saheb Deshmukh, Chowdhari and Bhagwant Rao Pawar, met him and he had a talk with them. They told him that the polling was over peacefully and calmly. They did not tell him that the congress workers had complained to them that the Samiti workers had engaged tongas and other vehicles for carrying the lady voters to the polling booth. The Samiti leaders V. D. Deshpande and Dajiba Desai had also met him and they told that the polling was over peacefully and calmly without any disturbance.

He is a disinterested person. He is not the member of the Samiti party so his statement is of great importance. If the Samiti workers had engaged the hired vehicles for carrying lady voters the above said prominent congress persons would have told him that they had received the complaints from the congress workers and he would have deposed the same before the court. I see no reason to disbelieve his statement.

196. Sharifa Bi (P.W. 30) states that she and her daughter-in-law Durumtasa Begum went to cast vote in tonga. It was brought by Samitiwala. One Gowli boy was on the tonga who had asked them to cast vote to Gaadi. The hire was paid by the Samiti worker. It was not paid by her, or by her husband or daughter-in-law. She and her daughter-in-law were carried in one tonga while in the other tonga, lady voters Habeeb Bi, Hamida Bi and members of Mohboobis family were carried. She identified Nandoo tongawala and said that he had taken her and her daughter-in-law in his tonga. Her identification of Nandu has no importance as she was brought on the date of hearing to the court in his tonga.

In cross examination she states that the congress workers or the police constable did not object on his carrying them in the tonga. She states further that she does not know as to who and which party had engaged the tonga, for carrying the lady voter.

Her name is not mentioned in the petition or amplifying statement. It appears from her statement that she deposed the tutored facts in the preliminary statement as in cross examination she has stated that she does not know as to who and which party had engaged the tonga which had come for carrying the lady voters. The non-petitioner has examined Dada Miyan (D.W. 3) who has stated that his mother Shrifabi and wife Badrumnisa Begum had gone walking to Rahman Ganj polling booth for casting votes. The booth was at a distance of 150 paces. His statement appears to be correct as the polling booth was very near to his house and he belongs to the labour class so the members of his family would have gone to the polling booth on foot.

197. If the hired tongas would have been engaged for bringing lady voters, the congress polling agents or workers would have complained to the police constables or to the presiding officer. The complaint which was made to the presiding officer was found to be false in the enquiry. P. W. 56 the returning officer has stated that he did not receive any direct complaint about the commission of election offences, such as engaging of tongas and other conveyances for taking the voters to the polling booths when he visited the booths on the polling day from the congress workers or the presiding officers.

198. The other witness of the petitioner is Amina Bi P.W. 33 who states that she is a poor woman. She worked for Samiti in the Jalna parliamentary bye-election. She was deputed to carry lady voters to the booth and to bring them back to their houses. On the polling day they carried lady voters in the tongas, bullock carts and motor cars to the polling booth which was in town hall. She carried the wife and daughter-in-law of Hafizji in the motor car to the polling booth at the school from Murgi Talab Mohalla. Hafizji's son is Ibrahim.

In cross examination she states that she had started to work for Samiti 12 days before the polling at the instance of Bane Khan who had promised her that she would be paid some money. Bane Khan is an elected member of the town municipality at the congress ticket. She does not know what is congress and what is Samiti. There were two or four vehicles in all (tongas, bullock carts and motor cars,) for carrying the voters. She made the lady muslim voters to sit in the tongas and she went **BEHIND THEM UPTO POLLING BOOTH**. She also went along with the bullock carts upto polling booth. She went in the motor car along with lady voters to the polling booth. Bane Khan had sent the tongas and bullock carts for carrying the voters. She states that she carried in all four to five hundred lady voters to the polling booth among whom she had canvassed.

Her statement is not believable for a second. It appears that she has deposed at the instance of Bane Khan who is the elected member of the town municipality Jalna on the congress ticket. If she had worked for Samiti so actively that she had taken four to five hundred voters to the polling booth she would have taken her husband also to the polling booth and she herself would have voted in the election, but it appears from voters marked list that neither she nor her husband cast the vote. Her name appears on Serial No. 92 and her husband's name appear on serial No. 911. They are marked as Ex: P-53.

199. The petitioner should have examined the lady voters whose names he had mentioned in his amplifying statement, but he failed to examine them. The legal presumption under section 114 Indian Evidence Act would be that they were not examined, because if they would have been examined their statements would have been that they were not carried by Samiti workers in the tongas. The evidence adduced is a concocted one and insufficient to establish that hired tongas were engaged by Samiti workers to carry the lady voters to the polling booths.

200. D.W. 85 Dhan Mohanlal Executive Officer City Municipality Nanded has stated that he was the Executive Officer of Municipality Jalna at the time of Jalna parliamentary bye-election. He was ordered to supervise the polling booths of Jalna. He visited all the polling booths of Jalna on the polling day. He did not receive any complaint that the voters were brought in hired conveyance

201. The petitioner has further alleged under this objection that some hired bullock carts were employed by the non-petitioner to carry voters of Bhogaor Taluq Jinfoor and Wafoor Taluq Partur. In the amplification he states that the lady voters of Shri Baba Sahab, Kesha Rao Deshmukh Vinayak Rao Deshmukh

Yadav Rao Deshmukh residents of Bhogaon Taluq: Jintoor were taken to the polling booth in the hired bullock carts of Rambhoo Bapu Wani and Vishwanath Ganpati Mali, which were procured by Devidas Rao Deshmukh and Aba Saheb Deshmukh, the local polling agents of the non-petitioner on paying Rs. 5/- to each bullock cart owners, Hanmant Rao Ghare has seen that lady voters of Ghare families being taken to the polling booths in the hired bullock carts.

202. It will appear by perusing the petition and the amplification that the petitioner altered the allegation for adducing concocted evidence. In the petition he alleged that many muslim lady voters utilised the hired bullock carts for conveyance at Bhogaon, while in the amplification he has mentioned that the voters from the Deshmukh families of Baba Saheb, Keshorao, Vinayak Rao, and Yado Rao, residents of village Bhogaon Taluq: Jintoor utilised the hired bullocks carts for conveyance arranged by the local polling agents of the non-petitioner. The evidence adduced by the petitioner should not be looked upon as per provision of the law but as it has been recorded so it is better to see whether it is believable.

203. P.W. 36 is Abasahed resident of Bhogaon Jintoor who was the polling agent of the non-petitioner on the male booth. He says that he had engaged two bullock carts of Vishwanath Pangal and Rama Wani on hire of Rs. 5/- each for taking the lady voters to the polling booth. The lady voters of his family and of Ganeshrao Jairam Bhau, Baba Saheb, Gaffoor Bhal, ABDUL Karim, Bhikaji Attar and Mohboob were taken in the carts, Rambho P.W. 40 had carried the lady voters of Deshmukh families and Vishwanath P.W. 37 carried the lady voters of muslim and Deshmukh families. He (the deponent) paid the hire of the carts after obtaining receipts from them in the evening at 6 P.M. The receipts were given to the non-petitioner. They are not in the record. In cross examination he states that he had no personal talk with the non-petitioner before the polling. He had met him after election at Bori. The non-petitioner had not come to his village Bhogaon before election. He worked for the non-petitioner only on the day of polling and before that he did not canvass for him. He went at the polling booth at 7 A.M. and remained there till 5 P.M. He came out of the polling booth two or four times. The female polling booth was at the chowadi. He was not the polling agent at the female polling booth. He states further that he had come out of the polling booth for the first time at 9 A.M. He asked the cart drivers of both the carts to bring lady voters in their carts inducing them to vote for the non-petitioner. The Samiti workers had given him Rs. 10/- to pay the hire of the bullock carts. When he had engaged the carts of Rambhoo Wani and Vishwanath Pangal there was no one else. Three or four police constables were at the polling booth for maintaining order. There were polling agents of the petitioner on both the polling booths. *They did not complain in his presence to the presiding officer or to the police constable that the voters were brought in the carts.* He further states that he did not even hear that the congress polling agents had made any such complaint. Dagduba Deshmukh was the congress polling agent on the female polling booth.

No doubt he was the polling agent of the non-petitioner at the male polling booth and he has stated that he had engaged the bullock carts of Vishwanath Pangal and Rama Wani on a hire of Rs. 5/- for carrying lady voters of muslim and Deshmukh families to the polling booth but his statement is not reliable. It appears that he was tutored to depose like this. In the preliminary questions he had stated that the non-petitioner had asked him to engage the bullock carts, but in cross examination he deposed that he had no personal talk with the non-petitioner before the polling. He met him at Bori after election. Before polling the non-petitioner had not come to his village. It is apparent as day light that his statement that the non-petitioner had asked him to engage the bullock carts on hire is absolutely false. He has stated further in cross examination that the non-petitioner's workers had given him the hire amount 2 or 3 days before the polling at Jintoor. They are not acquainted to him, nor he knows their names. He states further that Annaji Gavane had met him 7 or 8 times before the polling but he did not give money to him for hiring the carts. His statement therefore that Samiti workers had given money to him for paying the hire of the carts is not believable.

204. Vishwanath Ganpati resident of Bhogaon P.W. 37 states that Aba Saheb had engaged his (deponent's) bullock cart one day before the polling for the polling day on a hire of Rs. 5/- for carrying lady voters to the polling booth. He carried the lady voters of muslim and Deshmukh families for the whole day. Aba Saheb had asked him to carry the lady voters of the families of Aba Saheb, Jalrambhau, Ganesh Rao, Devidas Rao, Dhondiba and of Muslim families Annu Bhal, Gaffoor, Bhikkaji, Attar and other, Aba Saheb was at the Chowadi on the polling day. The school is in front of the Chowadi at 100 paces and it was



visible from there. He did not carry the lady voters of the families of Vinayak Rao and Yado Rao Deshmukh. The ladies, whom he had carried were observing Parda. He did not direct the lady voters while carrying them to cast their votes to Samiti candidate. When Aba Saheb had directed him to take the lady voters to the polling booth and when the hire was paid to him nobody else was present. He states further that Aba Saheb belongs to the party which had its symbol of 'GADI' (cart). Patel, Patwari and the police constables who were present there did not object on his carrying the lady voters in the cart. *His step-mother and his brother's wife had gone on foot to the polling booth for casting vote. They were not carried in the cart.* This fact itself shows that his cart was not engaged on hire for carrying voters. If it was a fact he would have taken his step-mother and brother's wife to the polling booth in his cart.

205. Rambhu resident of the Bhogaon P.W. 40 states that Aba Saheb had engaged him cart for carrying lady voters to polling booth. He paid him Rs. 5/- for the same and he carried the lady voters to the booth at the Chowdi. He did not take the hire from the voters. The police constables were posted at the chowdi polling booth for maintaining order. They did not ask or object on his taking the lady voters in his cart. The congress polling agent and workers also did not object on his carrying the lady voters in the cart.

206. It appears from the statements of these two witnesses that the police constables were posted for maintaining order at the polling booths. If it was a fact that the Samiti workers were bringing the lady voters in the hired carts, the congress workers who were there would have complained about it to the police constables or to the presiding officer and the presiding officer would have taken action against them. But it appears from their statements that no such complaint was made either to the police constables or to the presiding officer. Their statements that Aba Saheb had engaged their carts for bringing lady voters are not reliable.

207. The non-petitioner has examined Dagdoba resident of Bhogaon as D.W. 16. He was the polling agent of the petitioner at the female polling booth Bhogaon. He was there since 7-30 A.M. to the end of polling. He states that he did not see the Samiti workers bringing the lady voters in hired bullock carts or dennis. He states further that Rambhau Wani does not own the bullock cart. He did not see Vishwanath s/o Gana Pangal of Bhogaon carrying lady voters to the polling booth. He was in the service of Vinayak Rao Deshmukh at that time. He states that he had seen there the carts of Vinayak Rao, Yado Rao, Parshad Rao, Dagdoba, Gulab Rao, Gafoor Bhai and Ganesh Rao and of his own. The lady voters of their families had come in them to vote. He states further that he and his wife and brother had cast their vote in the bye-election.

208. Gulab Rao D.W. 17 was the polling agent of the non-petitioner at the female polling booth Bhogaon. He states that he was at the polling booth from 8 A.M. to 5 P.M. The pardanashin ladies came in their own bullock carts and not in the hired carts. The bullock carts belonging to Parsad Rao, Vinayak Rao, Yado Rao, Dagdoba and to him had brought the lady voters. Vinayak Rao was the prominent worker of the congress in the by-election. He further states that Rambhau Wani owned no cart and he did not bring the lady voters. Vishwanath Pangal had not come to the polling booth. The witness further states that his cart was driven by his cousin Bhim Rao. The carts of Vinayak Rao and others named above had come only once to the polling booth. The witness further states that Bhujang Rao or Baba Saheb did not ask him to engage bullock carts on hire for bringing lady voters.

209. Vithoba D.W. 19 states that he purchased the cart of Rambhau Wani two years back.

210. Baba Saheb D.W. 18 states that the non-petitioner or Bhujang Rao did not ask him to engage hired bullock carts for carrying lady voters to the polling booth. Aba Saheb did not engage hired bullock carts for carrying lady voters. He specifically denies to have engaged the bullock carts of Rambhau Wani or Vishwanath Pangal on hire for carrying lady voters. Several bullock carts were carrying lady voters but they belong to them only. Bhujang Rao D.W. 31 also states that neither he nor the non-petitioner had given any money to Devidas Rao or Aba Saheb for engaging hired carts for bringing lady voters.

211. The allegation of the petitioner that the non-petitioner had engaged bullock carts for carrying lady voters is well rebutted by the statements of above named witnesses of the non-petitioner. If it was a fact that the non-petitioner had engaged the bullock carts for carrying lady voters the polling agents of the

petitioner would have complained to the presiding officer or to the police. As the same is not appearing from the record, the only inference would be that the bullock carts were not engaged by the non-petitioner or his workers.

212. Niyamatbi resident of Bhogaon P.W. 38 states that she had gone to the polling booth in the cart driven by Vishwanath. She did not pay the hire to him. Aba Saheb had asked her to go in the cart to the polling booth. In cross examination she states that in the general election of 1957 she cast the vote to the symbol "Cart". She had gone then on foot. She does not observe parda. The school where she had gone to vote is only 100 paces from the village. Vazirbi does labour work. She also does not observe parda. She came back on foot and other lady voters who had gone along with her also returned on foot. The ladies who had gone along with her were the wives of Gaffoor Bahi and Rahim. She further states that Aba Saheb told her to depose that she cast the vote for Samiti and she went to the polling booth in the cart.

Apparently she is a tutored witness and she has deposed what she was tutored to depose by Aba Saheb. Her statement is unreliable. Besides her name is neither mentioned in the amplifying statement nor in the petition.

213. P.W. 39 Baba Saheb of Bhogaon states that Aba Saheb had sent the cart. Vishwanath was driving it. He states that his family ladies went in it to the polling booth. He did not pay the hire of it. He states further that he does not know as to who were the congress and Samiti workers in his village. The female booth was at the school and the male polling booth was at the chowdi. He states further that he had seen the female members of Vinayak Rao and Yado Rao being taken to the polling booth in the cart of Rambhao Wani. Aba Saheb was the polling agent at the polling booth chowdi.

His statement is not believable as it is not supported by the statement of Vishwanath cart driver P.W. 37, who has stated that he carried the female voters of the families of Aba Saheb, Jairambhau, Ganesh Rao, Devidas Rao and Dhondiba and from muslim families of Annu Bhai, Gaffoor, Bhikaji attar etc., to the polling booth. In other words Vishwanath has not stated that he carried the lady voters or Baba Saheb's family. The petitioner has not examined the lady voters of Baba Saheb's family who had been actually carried to the polling booth in the cart of Vishwanath.

214. Sonba Bapu P.W. 24 resident of Ravegaon states that he worked in the bye-election for the non-petitioner. He was the polling agent for him at the polling booth of Ravegaon (J.J. 30). The non-petitioner had called him at the Samiti office Jalna 8 days before the polling and gave him Rs. 25/- for paying the hire of the carts engaged for carrying voters from village Wadgaon to the polling booth of his village. He paid Rs. 10/- to one Ambadas cart driver who had come to call him and had introduced him with the non-petitioner as non-petitioner was not acquainted with him. He states further that the non-petitioner paid the money calling him outside the office in the absence of Ambadas.

It is neither alleged in the petition nor in the amplifying statement that Ambadas brought the voters from village Wadgaon and Sona Bapu had paid him Rs. 10/- for the same. His statement therefore is not believable. Moreover it appears from his statement that he was not known to the non-petitioner. He was introduced by Ambadas to the non-petitioner. Obviously it was not necessary for the non-petitioner to give money to the witness for paying the same to Ambadas, as he would have paid the same direct to Ambadas (Cart Driver) who was acquainted to him.

215. The non-petitioner has examined Ambadas (D.W. 41) resident of Ravegaon who states that he owns no bullock cart. He is the employee of Narhari seth. Sonia Bapu did not engage his master's bullock cart on hire nor he had given him any money. He states further that he did not bring any voters in the cart to the polling booth.

216. The non-petitioner has examined Narhari D.W. 42 who states that Ambadas is his employee. He denies to have hired his cart to any party on the polling day.

217. I decide this issue against the petitioner and hold that neither the non-petitioner nor his election agent nor any Samiti worker with their consent (Express or Constructive) had hired or procured vehicles for the conveyance of any elector to or from any polling Station. The allegation is baseless.

## Objection No. 5 or Issue No. 9.

218. The non-petitioner did not submit the correct statement of Election Expenses such as:

- (a) he did not include the expenses of advertisements published in Marathwada, Vivek and Maratha news-papers and
- (b) the hire amount Rs. 10/- paid to Nandu tangawala for conveying the voters to the polling booth at Jalna Town.

In the amplifying statement the petitioner has further alleged that the non-petitioner did not show the cost of the petrol which he incurred for the conveyance of voters through hired taxis and the amount of Rs. 5/- each, which he paid to bullock cart owners and also the amount of Rs. 200/- paid to Miyan Jaan Deshmukh.

219. The petitioner has examined Nandu Tangawala (P.W. 3) to prove that the non-petitioner had engaged his tonga two days and he received Rs. 15/- as hire charges. The non-petitioner has stated that he had engaged only one Tanga on hire of Hari for 8 days from 25th January to 1st February both days inclusive at the rate of Rs. 5/- per day for moving the Loud Speaker in the town. He has shown the expenses of it in the accounts statement. He specifically states that he did not engage any other tanga.

220. His statement is supported by the statement of Narayan Rao D.W. 83. He states that he was incharge of the Election office Jalna. The office started functioning since 8th January 1958. He maintained the accounts of income and expenditure of Jalna office. He states that he obtained true receipts after paying the accounts. He had engaged one tonga of Hari since 25th January 1958 to 1st February both days inclusive at Rs. 5/- per day for moving the loud speaker in the city. Rs. 41/- were given to him for eight days as for 25th January he was paid Re. 1/- extra. He states that no other tonga was engaged on hire.

221. If the non-petitioner had actually engaged the tonga of Nandoo, he would have shown the hire charges of it also as it was an item of Rs. 10/- or Rs. 15/-, which is a very meager amount when compared with the amount of expenses shown in the Return. If he had shown it in the expenses Return, it would not have affected on his election adversely as by adding it the expenditure incurred by him would not have exceeded the prescribed limit. It is not appealing to me that the non-petitioner would have submitted a false Return of expenses for such a small amount. It appears to me that his statement is correct that he did not engage the Tonga of Nandoo on hire during this bye-election.

222. I have already held under issue 2 or objection No. 1 that the non-petitioner did not give a sum of Rs. 200/- to Miyan Jaan Deshmukh for distribution among the voters. When he had not given the amount of Rs. 200/- to Miyan Jaan Deshmukh, then how could he show the same in the Return of Election Expenses.

In the same way I have already decided under issue No. 8 that the non-petitioner had not engaged hired bullock carts for carrying voters and he did not pay Rs. 5/- as hire to each bullock cart owner. When he had not incurred the expenses, obviously he could not show the same in the Return of Election Expenses.

223. As regards to the cost of petrol he has shown the same besides motor hire charges, motor repairs expenses and purchase of motor parts, in the Return of Election expenses.

The cost of petrol purchased during bye-election is shown as below:

Date	Amount	Rs. As. Ps.		
7-1-58 . . . . .	13	0	0	
8-1-58 . . . . .	16	12	9	
9-1-58 . . . . .	9	3	9	
10-1-58 . . . . .	6	2	6	
11-1-58 . . . . .	70	10	6	
12-1-58 . . . . .	3	1	3	
13-1-58 . . . . .	18	13	6	
14-1-58 . . . . .	3	1	3	
15-1-58 . . . . .	6	2	6	
16-1-58 . . . . .	29	5	3	

Date	Amount		
	Rs.	As.	Ps.
17-1-58 . . . . .	44	11	0
18-1-58 . . . . .	59	6	9
20-1-58 . . . . .	102	4	3
21-1-58 . . . . .	50	12	3
22-1-58 . . . . .	90	4	0
23-1-58 . . . . .	49	3	9
23-1-58 to 27-1-58 . . . . .	85	10	6
24-1-58 to 7-2-58 . . . . .	400	0	0
	100	0	0
	200	0	0
			of petrol purchase
24-1-58 . . . . .	53	10	3
25-1-58 . . . . .	8	1	0
27-1-58 . . . . .	41	13	3
30-1-58 . . . . .	51	8	6
1-2-58 . . . . .	15	12	6
2-2-58 . . . . .	15	12	6

He has shown the Tonga expenses engaged for Loud-speaker since 25th January 1958 to 1st February 1959 Rs. 41/- Bandi hire charges.

19-1-58 to 26-1-58 . . . . .	60	0	0
Motor hire charges . . . . .	275	0	0

224. The petitioner's allegation is vague. He should have specified the Car No. and the date on which the petrol had been purchased for it and then he could say that it was not shown in the Return of Election expenses by the non-petitioner. The petitioner has not examined any petrol dealer to show that the non-petitioner had purchased the petrol from him and it was not shown in the Return of Election expenses. Mere vague allegation is not enough to disbelieve the correctness of the Return of Election Expenses submitted by the non-petitioner.

225. The petitioner has contended also under this objection that the non-petitioner did not include the expenses of advertisement published in the newspapers Marathwada, Vivek and Maratha. He examined Anant Bhale Rao, as P.W. 13. He is the editor of newspaper Marathwada. He states that he is the member of Samyukta Maharashtra Samiti and convenor of district Parliamentary Board of Samyukta Maharashtra Samiti District Aurangabad. He worked on behalf of Samiti for the non-petitioner in the bye-election and appealed the audience to vote for him. He has stated the history of the Marathwada newspaper, that it had supported the congress policies till 1950. After 1950 it supported the socialist ideology and the progressive outlook in general. It supported the issue of the formation of Samyukta Maharashtra. Before the formation of Samyukta Parishad in which congress also had participated, this paper used to support the Parishad which later on formed a Samyukta Maharashtra Samiti. He stated the policy of the paper that it supported the candidates of Samyukta Maharashtra Samiti in the General Election of 1957, as a part of Samyukta Maharashtra movement. This paper supported the candidate of Samyukta Maharashtra Samiti in various elections for the cause of Samyukta Maharashtra and not for their personal interest. He states further that this paper did not act as an agent of any candidate of any party in the Election. If instead of Ankush Rao Ghare, there would have been any other candidate of Samiti in the Jalna Parliamentary bye-election the paper would have supported him. The editorials of this paper dated 16th January 1958 to 9th February deal with Shri Ghare's Election. By these editorials he (the witness) appealed the public to vote for Samiti candidate. News items EXP 25, 26 to 41 published in the paper are correct so far as the reports received in the office. These news items pertain to Samiti candidate in Jalna bye-election. The news item marked Ex: P-27 is sent for publication by the staff reporter. Ex: P-57

is a news item with a news flash giving details of the next issue. It bears the photograph of the non-petitioner. Ex: P-58 is the life sketch of the non-petitioner. Ex: P-59 is the statement of the Samiti leaders appealing the voters to vote for the non-petitioner. It bears the photo of the non-petitioner. Exp 60 is the photograph and the Election symbol of the non-petitioner. The witness has further stated that all these Exhibits are not advertisements but they are news items. He published these news items to remind and persuade the voters to vote for the Samiti candidate. Nothing is charged for them.

226. It is evident from his statement that the non-petitioner did not pay any money for the publication of news items in the newspaper Marathwada so he did not show the same in the Election expenses Return that he paid the money for the publication of his life sketch, photo and symbol.

227. The petitioner should have examined any witness to prove that the amount was paid by the non-petitioner for publication of his life sketch, photo and symbol and the same was omitted in the Return of Election expenses, then only it could be said that the non-petitioner submitted the wrong Return of Election expenses. It appears that the above said newspaper voluntarily rendered their services free of charge to the non-petitioner, so the non-petitioner's contention is correct that he did not pay any money to the newspapers—for publishing his life sketch—photo and his symbol of Election.

228. The petitioner has examined Kesho Rao the manager of newspaper Marathwada bi-weekly as P.W. 65. He states in reply to the specific question that EXP 59, 60 and 16 are not advertisement and no money was received from any body for their publication. He states that the paper (Marathwada) fully devotes itself for Samiti candidate. The photos as well as the life sketch of Samiti candidate are published in it. They are not published as advertisement and nothing is charged for their publication.

229. The non-petitioner himself has come in the witness box and has stated that Marathwada and Maratha newspapers are the supporters of Sanyukta Maharashtra Samiti and therefore they published his photo and like sketch. as he being the Samiti candidate. He states that he did not pay money for publishing his photo, life sketch or symbol. He sent his photo as they had asked it. Marathwada and maratha newspapers have published the life sketches and photos of Samiti candidates of other elections and bye-elections. He states further that Maratha and Marathwada newspapers had not acted as his agents. They are the supporters of Sanyukta Maharashtra Samiti, and as the non-petitioner being the Samiti candidate they supported him. He had not asked them to publish his photo or any news item about him or about the election.

230. I see no reason to disbelieve the non-petitioner's statement as it is well supported by the statements of P.Ws 13 and 65 and D.W. 83;

231. The return of Election Expenses submitted by the non-petitioner is correct. The allegation of the petitioner is baseless.

232. To form a corrupt practice under clause 6 of Section 123 R.P. Act, it is necessary to prove that the non-petitioner incurred expenses in excess to the prescribed amount. The petitioner has failed to establish the same, so the allegation is rejected.

*Objection No. 66 or issues Nos. 10, 11, 12 and 16*

233. The non-petitioner secured the services of Govt. servants against the provisions of sub-section 7 of section 123 of R.P. Act to further the prospects of his election and to refrain the voters from voting for the petitioner.

The petitioner alleged under this objection in his petition as below:

- (a) The services of one Shri Moghe District Inspector of Schools Aurangabad were acquired by the non-petitioner and his election agent Shri Pandit Rao Gavane. Shri Moghe had openly canvassed for the non-petitioner so the complaint was made through the President of Aurangabad Dist. Congress Committee to the Deputy Director of Education Aurangabad on 23rd January 1958 but Shri Moghe manipulated to be appointed as presiding Officer at Badnapur Taluq Jalna. There he helped the non-petitioner by allowing the personification for obtaining the ballot papers. He issued ballot papers to one Shri Ibrahim son of Miyan Bhai who personified and misrepresented for

Shri Ismail S/o Miyan Bhai, on the alleged identification of the non-petitioner's polling agent, in spite of the protest of the petitioner's polling agent. Issue No. \*16.

- (b) The attention of Shri Deshpande the presiding officer at the polling booth village Kupta Taluqa Jintoor was drawn to the wall poster of the non-petitioner which was pasted on the wall of the booth within 100 yards from the ballot boxes at the prominent place, which was influencing the minds of the incoming voters. The said poster was seized under panchnama by the presiding officer on the written complaint of the election agent of the petitioner, but the non-petitioner came there at 3-30 P.M. and to his astonishment the presiding officer hushed up the matter under the influence of the non-petitioner and did not send the panchnama and the poster to the Returning Officer.

(Issue No. 10)

- (c) The non-petitioner visited Ghanswangi Taluq: Ambad where he called the village officers of Dhakephal and successfully induced them to misdirect the voters. The village officers informed the voters, that they were not entitled to vote in the bye-election as a result that not a single voter turned up at the polling booth Ghanswangi.

(Issue No. 11)

- (d) At the instigation of the non-petitioner's polling agent of Mustgad booth one police constable Bill No. 544 forcibly entered in the office of Bhartiya Dalit Jati Sang and tore off the wall poster of Pt. Jawaharlal Nehru. Many voters were frightened by his overtures and the voters of scheduled caste of that area did not vote (Issue No. 12).

(Issue No. 16)

234. Shri Ram (P.W. 26) resident of Badnapur states that Shri Moghe was the presiding officer at the polling booth Badnapur. At that polling booth one Ibrahim cast the vote for his brother Sheik Ismail. Ibrahim's name was not in the voter's list. The panchnama was drawn about it. Besides him Jagannath son of Vithoba and Asrama son of Pannalal were present. Ismail did not cast vote after panchnama. Ex: P-82 does not bear his signature. On the specific question as to whether any other panchnama besides Ex: P-82 was drawn at that time, he states that one other panchnama was drawn. He does not know as to what happened to it afterwards. The other panchas did not sign on Ex: P-82 in his presence. In cross examination he states that he is the member of the Congress Party since last 10 years.

Sheik Ismail P.W. 27 states that he had gone to cast vote but he was not permitted to cast vote. He was told that some body had already cast the vote in his name. He was not allowed to cast vote even after panchnama, and was threatened that he would be handed over to the police for detention and he was detained. These panchnamas were drawn. He does not remember the name of the panchas. One panchnama was drawn in his presence. He affixed his thumb impression. After hearing the contents of the panchnama Ex: P-82 the witness has stated that it is the same panchnama which was drawn at the polling booth. The congress polling agents were present when the panchnama Ex: P-82 had been drawn. It is mentioned in the panchnama that Rampershad congress polling agent identified the deponent to be real Sheik Ismail. It is also mentioned in the panchnama that Rampershad congress polling agent requested the presiding officer to take the deponent's tender vote and it was taken. This portion is marked as Ex: D-64. The boxes were sealed in his presence. He further states that the three panchnamas were drawn and he signed on all the three panchnamas. Shri Ram Seth also signed on the panchnama at the polling booth. He does not remember whether other panchas signed on them. The thumb impression of his brother Sheik Ibrahim was taken in his presence at the polling booth. He (Sheik Ibrahim) told that he cast the vote in deponent's name. Sheik Ibrahim was sent by Shri Appa Saheb Joshi the Samiti worker to cast vote. There are several persons in village Badnapur of his name and of Ibrahim.

It is evident from his statement that Ex: P-82 was drawn in the presence of congress polling agents and the witness at the polling booth. It is mentioned in it that the deponent's tender vote was taken at the request of the petitioner's polling agent.

I am unable to understand as to what irregularity was committed by the presiding officer. If he had not taken the tender vote of Sheikh Ismail then it could be said that the presiding officer performed his duty irregularly.

It is not proved as to what were the contents of other alleged panchnamas. It is possible that the presiding officer might have prepared first the draft of the panchnama and then a fair copy of it might have been scribed.

Sheik Ibrahim, P.W. 28 states that he cast the vote in the name of his brother Sheikh Ismail at the instance of Appa Rao Joshi. Mohd Akbar, Congress polling agent had objected to his identity but the patel and patwari of his village who were writing the poll chits did not object to his identity so Shri Moghe issued the official ballot to him. He further states that he was called at about 5-30 or 6 P.M. and three panchnamas were drawn. The Congress polling agent did not deposit Rs. 2 with Shri Moghe. He does not know if he deposited the same in his absence. He states that *Shri Akbar, the Congress polling agent directed him to attend the court so he attended the court.* He did not receive the summon from the Court.

From his statement also it is evident that Shri Moghe discharged his duty as per provision of the Election Law. Shri Akbar, the polling agent had not deposited Rs. 2 with the presiding officer when he had challenged the identity and the patel patwari of his village had not objected on his identity so the presiding officer correctly issued the ballot paper to him.

It appears that he has stated that 3 panchnamas were drawn at the instance of Shri Akbar because he attended the court at his instance without summon of the Court.

The name of Mohd Akbar (P.W. 29) is not mentioned in the list of witnesses. He is not summoned through court. He states that he was the polling agent of the petitioner at Badnapur polling booth. One Sheikh Ibrahim personified himself as Sheikh Ismail. The presiding officer drew the panchnama. Shri Rampershad was the polling agent of the Congress. The panchnamas were torn and when the third panchnama was under writing Shri Moghe asked him to quit the booth and he quit it. He does not remember whether Shri Moghe had asked Shri Rampershad also the other polling agent of the petitioner to quit the booth. He quit the booth at about 7 or 7-30 A.M. All the panchnamas were drawn after 5 P.M. The panchnama Ex. P-82 was not written in his presence. It was written after he quit the booth. The contents of the torn panchnamas were not like the contents of Ex. P-82. He does not remember as to what was written in them. He did not deposit any money with the presiding officer to challenge the vote. He did not make any complaint to the returning officer that he was asked to quit the booth and two panchnamas were torn. He states that he had told the petitioner that the two panchnamas were torn.

The witness has admitted that he had not deposited Rs. 2 with the presiding officer to challenge the vote so the presiding officer correctly issued the ballot paper to Sheikh Ibrahim. He quit the booth at about 7 or 7-30 P.M. and the panchnama Ex. P-82 was drawn at about 5-30 P.M. so his statement that the panchnama Ex. P-82 was not drawn in his presence is false and unreliable. He is unable to say the contents of the torn panchnamas so his statement that the panchnamas were torn has no importance.

235. Shri Kishan, P.W. 31 states that he was the polling agent of the non-petitioner at Badnapur polling booth. One Sheikh Ibrahim personified himself to be as Sheikh Ismail. Akbar Miyan, the petitioner's polling agent objected at the issue of ballot to him, but Shri Moghe asked him to keep quiet and issued the ballot. Mohd Akbar did not challenge his vote before the presiding officer and did not deposit Rs. 2 as challenge fee. He inquired Shri Joshi as to why his name is not in the voters list. He told him as to what he has to do. Shri Moghe is the man of Samiti and he should not worry. Shri Joshi had not told that Sheikh Ibrahim was the man of Samiti. Subsequently Sheikh Ismail came. Mohd Akbar identified him to be real Sheikh Ismail. Shri Moghe called Sheikh Ibrahim through a constable. Sheikh Ibrahim came. Shri Moghe being satisfied that Sheikh Ibrahim cast vote personifying himself to be Sheikh Ismail, he drew the panchnama but it was torn. No other panchnama was written in his presence. The panchnama was torn at about 4-15 P.M. Shri Moghe did not ask Mohd Akbar to quit the booth. He does not know whether the Congress polling agent made any complaint to the police that the panchnama was torn by Shri Moghe. Rampershad, polling agent was present when the scribing of the panchnama had started. Dhondiba, Mali Patel and Dajiba Janardhan, Patwari were present at the time of Panchnama.

It appears from his statement that Shri Moghe discharged his duty as per provision of the law. Shri Akbar did not deposit the challenge fee so the presiding officer issued the ballot paper to Sheikh Ibrahim. When subsequently real Sheikh Ismail came he held inquiry and when he was satisfied that Sheikh Ibrahim personified his brother Sheikh Ismail and cast the vote he drew the panchnama Ex. P-82 and the tender vote of Sheikh Ismail was taken. He acted according to law.

236. Jagannath, P.W. 32 states that at the polling booth Badnapur some disturbance took place, so he Shri Ram Seth and Asaram Tapde were called by the police constable as panchas. Sheikh Ibrahim had cast the vote personifying himself to be as Sheikh Ismail. It was mentioned in the panchnama that Sheikh Ismail was not permitted to cast the vote as his brother had cast the vote personifying himself as Sheikh Ismail. The above named three panchas signed on the panchnamas. Ex. P-82 does not bear his signature and the signatures of other panchas. Ex. P-82 bear the signature of Dhondiba, Mall Patel, Bhau Rao Yemai, Police Patel and Dajiba Janardhan, Patwari. They were the poll chit writers at the polling booth of Badnapur. Kundlik Jarhad, the polling agent of Samiti also had signed on it. Rampershad Laxmi Narayan refused to sign on the panchnama. It is mentioned in the panchnama, There are two thumb impressions also on the panchnama. Shri Ram Seth is a Congress member since last 9 years. At the time of drawing panchnama 10 to 15 persons were present. The polling agents, Congress workers, Appa Saheb, the panchas, Sheikh Ibrahim and Sheikh Ismail were present. *The panchnama on which he had signed was not torn in his presence.* Kundlik Jarhad is his real brother. He was present at the polling booth at the time of panchnama. It is mentioned in the panchnama that at the call of presiding officer the panchas came there. *Ex. P-82 is one of the panchnamas which had been drawn at the polling booth.* Mohd Akbar was present when the panchnamas were drawn. He further states that he and the other two panchas signed in his (Mohd Akbar's) presence on all the 3 panchnamas. The contents of Ex. P-82 were read over and he says that one of the panchnamas was drawn of the same contents. One panchnama was torn and the other panchnama of the same contents had been drawn. The first panchnama was drawn at 4-30 P.M. The other panchnama was drawn at 5 P.M. The third panchnama Ex. P-82 was drawn at 5-15 P.M. immediately after the second panchnama in his presence. Rampershad and Kundlik were present when the third panchnama was drawn. They were not present when 1st and 2nd panchnamas were drawn.

His statement is not helpful to the petitioner. He has stated clearly that the panchnama Ex. P-82 is one of the panchnamas which had been drawn at the polling booth. As I have already stated that it is possible that the other panchnamas might be the drafts of Ex. P-82 and so they were torn.

237. Bhujang Rao states that Shri Moghe, Inspector of Schools had been appointed as the presiding officer but on receipt of complaint he was kept in the reserve list. The officer actually appointed for Badnapur booth had not turned up so Shri Moghe was directed to preside the polling booth Badnapur. The complaint made against him was not proved.

238. The petitioner has examined Ramchander, P.W. 64 who states that he made the complaint about Shri Moghe's anti-Congress activities to the Collector, Aurangabad. It appears from his statement that two dates were fixed by the Deputy Director of Education Department for inquiry in the complaint but he did not produce the evidence before him in support of the complaint so the Deputy Director of Education, Aurangabad through the confidential report Ex. P-121 informed the Collector that the complaint is baseless.

239 The non-petitioner has examined in rebuttal Dada Rao, D.W. 49, Eknath, D.W. 50 and Suban, D.W. 51. They state that Ex. P-82 was drawn at the polling booth as Sheikh Ibrahim had voted in the name of his brother Sheikh Ismail.

240. Janardhan Moghe has come in the witness box as D.W. 68 who states that a complaint had been made against him by the Congress party that he had canvassed for the non-petitioner. It was absolutely incorrect. The real background of the complaint was that he had been directed to make enquiry against one Head Master Shridhar Rao Joshi of Central Primary School, village Anva by the Deputy Director of Education, Aurangabad. The efforts had been made by various persons to mitigate the case, but in the enquiry the charge was proved against the head master that he had mis-appropriated the amount of Rs 1000 which had been deposited by the public for opening the Vth class. Manik Rao Deshpande who is the Congress worker might have disliked it, as he had tried



to mitigate the matter and made the complaint against the witness. He states further that the Deputy Director of Education, Aurangabad called him on complaint and he explained all the facts and showed the content for enquiry. The date was fixed in consultation with the District Congress President for enquiry, but before the date of enquiry he had been informed of the date being postponed. Two subsequent dates were fixed in consultation with the District Congress President, but no enquiry was made. He states further that he showed his readiness from being relieved of the duty of presiding over the polling booth. Accordingly the order to preside over the booth was cancelled. But the Collector directed him to go to Jalna and see the Tahsildar. He went there and as the Presiding Officer of Badnapur was absent so the Tahsildar directed him to preside over the booth. He states further that he had taken every precaution and followed the procedure for not giving room to the contesting parties for suspicion. He has put in the service for more than 25 years and the remaining service is of 2 years. He was the presiding officer in the first and second General Election and in the bye-election of Phul Ambri. He states that at about 4-45 P.M. one voter by name Sheik Ismail had come but as one person had already voted on his name, so his tender vote was taken. Ex. P-82 was drawn about the incident. The contents of the panchnama are true and correct. He has stated on oath that no panchnama was torn.

I see no reason to disbelieve his statement.

241. It is not proved that Shri Moghe was the friend or relative of the non-petitioner. Admittedly the non-petitioner is not the superior officer of Shri Moghe. It is also not proved that Shri Moghe is the member of sympathiser of the Samiti party. I am unable to understand as to why Shri Moghe would go out of the way putting his Government service of more than 25 years at the time of retirement in risk particularly when he is a man of family, to favour the non-petitioner. The Government servants have no concern with any political party. They perform their duties according to law and direction of their superior officers. The allegation against Shri Moghe is imaginary. This issue is decided against the petitioner.

#### Issue No. 10.

242. It is said that Shri Deshpande, the presiding officer of polling booth Kupta had seized the wall poster of the non-petitioner as it was pasted within 100 yards from the polling booth at the written application of the election agent of the petitioner but it was not forwarded to the Returning Officer at the instance of the non-petitioner and the matter was hushed up.

243. The petitioner has examined Vithal Rao, P.W. 44 who is the police constable B. No. 895. He was on duty at the polling booth Kupta at the time of parliamentary bye-election. He states that Shri Shivaji Rao, Pleader had come to Kupta at the time of polling. One panchnama about the seizure of the wall poster was drawn. The distance between the polling booth and the place where it was pasted was measured in his presence. The presiding officer had drawn the panchnama. In cross examination he states that he was posted at the ballot boxes room at the door. The head constable and the other constables were posted at the boundary of the marked area. The presiding officer had asked the Head Constable and other constables to see as to whether any wall poster was found pasted within the marked area. He further states that he remained at the door of the ballot boxes room from morning till the polling ended. He does not know where from the poster had been brought. He does not know about the incidents happened out side the room. *He heard that one panchnama was drawn about the seizure of poster.*

I shall discuss with the evidence adduced on this allegation in detail under objection No. 8 of the petitioner.

244. It appears from the evidence adduced that no such incident occurred. As I stated before that the non-petitioner is not the superior officer of Shri Deshpande, so it cannot be said that the non-petitioner could influence Shri Deshpande, the presiding officer. It appears that the election agent of the petitioner himself had contravened the provisions of Election Law and had entered the prohibited area of 100 yards with the Congress flag on the bonnet of his Jeep Car to which the presiding officer had objected. He felt it and threw the blame on the presiding officer that he hushed up the matter coming under the influence of the non-petitioner. There was no hope to Shri Deshpande that by hushing up the matter he would be promoted but he knew very well that

if he would hush up any irregularity, committed in the conduction of the polling, his Government service would be put in danger. Shri Deshpande is not so fool as to put his service unnecessarily in danger. He discharged the duty as per Law and the allegation is the creation of suspicious mind either of the petitioner or his election agent. It is a legal presumption that the official acts are regularly performed unless contrary is proved.

245. The non-petitioner has examined Uddav Rao as D.W. 88. He states that he was the presiding officer at Kupta in the Jalna Parliamentary bye-election. He says that he had sent the report at the close of the polling. He states that he did not hush up any irregularity committed by the Samiti worker at the instance of the non-petitioner. No poster of the Samiti was pasted within 100 yards from the booth. No panchnama about the seizure of poster was drawn. No complaint was made by Shivaji Rao and he had not requested him for drawing a panchnama. The deponent identified his report marked as Ex. D-144. I see no reason to disbelieve his statement.

The evidence adduced is insufficient. The issue therefore is decided against the petitioner.

Issue No. 11.

246. Maruti, P.W. 66, resident of Dakhephal Taluq, Ambad states that the non-petitioner met him at Ghansawngi five or seven days before the polling on the Bazar day. He was sitting in the house of Damu Anna. He called him and asked him to inform patel and patwari of his village Dakhephal to see him (the non-petitioner). Appa Rao, Patwari; Laxman Rao, Mali Patel and Sham Rao, Police Patel met the non-petitioner who told them that village Dakhephal is not included in polling booth Masegaon so the villagers should not go to cast. He further stated that the non-petitioner also had told them that if the voters intend to vote for him they could go other wise they should not go. The village officers called the villagers one day before the polling and told them accordingly that they should not go. At the directions of the village officers the villagers did not go to Masegaon for casting votes.

In cross examination he states that it was proclaimed on beat of drum one day before the polling in the evening that the villagers of Dakhephal were not permitted to cast their votes and they should not go for voting to polling booth Masegaon. It was proclaimed by the village officers through *mangs*. He was present at that time. The patel patwari issued the chits to 10 to 20 Mahar persons and they went to cast vote. The other villagers did not go. No poll chit was distributed in his village by either party. No meeting was held and no lecture was delivered by either party. He states that he was not summoned by the court. He came at the instruction of Devidas Rao, Vakil of Ambad at his own expenses. He took the meals at Partur in the hotel at his own expenses. He came to Partur at a loss of his daily income of one rupee.

His statement is self contradictory. If the non-petitioner had told the patel patwari that village Dakhephal was not included in the villages, which are under the polling booth Masegaon, then how the non-petitioner could have told them to allow the voters to go to Masegaon if they intend to vote to him. His statement is not believable as he further states that the patel patwari had issued the chits to 10 to 20 Mahars who had gone to vote. He is a tutored witness and has given evidence at the instance of Devidas Rao, Vakil of Ambad.

247. Abdul, resident of Dakhephal, P.W. 67, Taluqa Ambad states that the election was held 9 or 10 months back at Masegaon. The villagers did not go to cast vote as the village officers had proclaimed that village Dakhephal was not included in the villages under the polling booth Masegaon.

In cross examination he states that at the time of previous election, the parties had distributed the chits but at the time of last bye-election the parties did not distribute the chits. Both the parties did not deliver lectures or canvassed in his village. Nobody told in the village that the polling would hold on a particular date.

248. It is clear that the villagers of Dakhephal did not go to cast vote because this time no party had canvassed in his village and no party had distributed the chits. The villagers still do not give importance to the election so they did not go for voting leaving their daily work.

249. The non-petitioner is neither the resident nor the Watander of village Dakhephal nor he is a revenue officer so there was no reason for the patel and

patwari to hear him and make false notification on the beat of drum putting their ancestral *watans* in danger.

250. The non-petitioner has examined Sheshrao, D.W. 47, Pandurang, D.W. 48 and Bhau Rao, D.W. 60. They depose that in the general election of 1952, the polling station was at their village so they had gone to cast vote, but in the general election of 1957 and bye-election the polling booth was at Masegaon so they did not go to cast vote leaving their work. The village officers did not make any proclamation prohibition. The villagers as not to go to cast vote. Bhau Rao, D.W. 60 has stated further that the village officers had asked them to go for voting but they did not go as Masegaon was at a distance. This issue is decided against the petitioner.

#### Issue No. 12.

251. The petitioner has examined Bansilal Kuril, P.W. 9 who is the resident of Dalit Jati Sangh Taluka, Jalna. His office is at Mastgad, On the polling day of Jalna parliamentary bye-election he was in the office which is in between Kila and the primary school. Shri Gangadhar Chitnis and Shri Devakar, Vakil are the Samiti workers. They brought one constable to the office and asked the constable to tear the poster having the portrait of Shri Mahatma Gandhi and Shri Pandit Jawahar Lal Nehru. The poster was of 2nd Five Year Plan wherein the plans for the uplift of Harijans had been mentioned. He objected to it but the constable removed the poster saying that he being the Government servant has to obey the orders of presiding officer and carried it away. He states that he complained to the presiding officer in writing. He did not take the receipt of the complaint from the presiding officer. He did not receive the report about the action taken on his application. He had sent the copy of it to the District Congress Committee, Aurangabad. His application is not in the record, received from the Collector, Aurangabad. The petitioner did not file the copy of his complaint which was forwarded to the District Congress Office. The petitioner did not examine the police constable Billa No. 544. He was an important witness. He would have stated as to whether he removed the poster at the direction of the Samiti workers or at the order of the presiding officer. Besides he would have told whether the poster was inside the office or outside on the wall and whether it was the poster of 2nd Five Year Plan. It is very much doubtful that the witness had complained to the presiding officer.

252. The non-petitioner has examined Gandhar Rao Chitnis pleader as D.W. 2 who states that he was deputed to supervise the polling at six polling booths of old Jalna. The Kils polling booth of Mastgad was within 100 yards from the office of Bharti Dalit Jati Sangh. He saw the congress candidate's poster pasted on the wall of the Dalit Jati Sangh office towards the fort. He asked the Samiti worker to inform the presiding officer of the Kila Polling booth. He states that he or the Samiti workers did not enter the said office to remove the posters of the candidate. In cross examination he has stated that the distance between the polling booth and the Dalit Jati Sangh office was 90 yards. He states further that it was printed on the poster to vote for the congress candidate and to strengthen the hands of Pandit Jawaharlal Nehru. The two posters were on the outer pillars of the office. There is no door to the office. On some posters there was the photo of Shri Pandit Jawaharlal Nehru and on some posters there was no such photo.

253. Considering the evidence of the parties, I come to the conclusion that it is not proved that the Samiti workers created a havoc at the office of Bharti Dalit Jati Sangh and removed the posters of the second five year plan which were hanging inside the office. Contrary to it, it appears that the posters of the congress candidate which were pasted outside the office were removed on the complaint at the order of the presiding officer as the office was within 100 yards from the polling booth. The Government officers, who are engaged in conducting the poll discharge their duties according to law. The objection is baseless and imaginary so it is rejected. This issue is decided against the petitioner.

#### Objection No. 7 or Issue No. 13.

254. The petitioner has alleged that the non-petitioner and his workers held a public meeting at Jitoor till 2 A.M. on the previous night to the polling day. He examined Sripat Rao (P.W. 51), Sheshrao (P.W. 52) and Aziz Khan (P.W. 53).

255. Aziz Khan P.W. 53 states that he owns a Taxi cycle shop at Chowk bazaar Jitoor. One public meeting of Samiti workers had held one day before the polling at Chowk bazaar. The meeting started at 10 P.M. He had lent the

petromax for whole night. He waited for the petromax till 1 a.m. in the night but the meeting continued, so he went away to the house after closing the shop.

In cross examination he states that one public meeting of Samiti had held in which Nana Patil had addressed the audience. He is unable to say as to how many days before the polling it was held.

It is apparent from his statement that he is a tutored witness. He is unable to say as to how many days before the polling the Samiti meeting had held wherein Nana Patil delivered his speech. Besides it was not necessary for him to keep his shop open till 1 A.M. in the night as the petromax was given for the whole night on hire to Samiti workers. His statement that the Samiti meeting continued even after 12 P.M. is a tutored one and not believable.

256. Sheshrao resident of Jintoor (P.W. 52) is the clerk of Yeshwant Rao Talnikar pleader and he works also in his cinema as a booking clerk since last 9 years. He states that the Cinema's first show starts at 7-30 P.M. and he works in the cinema till 12 P.M. or 12-30 in the night. The last Samiti meeting had held on 1st February 1958 in the night. Harihar Rao Deshmukh Vakil presided over it. He states that he was returning to the house from the Cinema at about 12-30 or 1 A.M. at the close of the 2nd show, he saw that V. D. Deshpande was delivering his speech. He stayed for 5 or 10 minutes and then went away to his house. In cross examination he states that Yeshwant Rao Talnikar is the president of the Taluqa congress committee Jintoor. He is the vice chairman of the Town Committee Jintoor; and he was elected at the congress ticket. He states further that the second show starts at 10-30 P.M. and the booking closes at about 11 P.M. His duty is only to issue the tickets and to give the account of the collection. Yeshwant Rao Talnikar personally manages the cinema. He further states that it is his duty to stay there till the second show is over. He goes to the house after the close of the cinema. Bhasker Rao operator of the cinema takes the keys of cinema to the house of Yeshwant Rao Vakil. He is unable to say by what way he had returned to his house from the talkies about four months back. There are two ways to his house from the cinema. He states that he is unable to say whether he crossed the cloth shop of Sunderlal Sahuji on that night while going back to his house from the cinema. He is unable to say as to how many days before and after the meeting the picture Ikdashi was screened. He is the employee of Shri Yeshwant Rao Talnikar pleader and works in his cinema. Shri Yeshwant Rao Talnikar is the president of the Taluqa Congress Committee Jintoor. He is the vice chairman of the town committee Jintoor. He has to pay 4 to 5 hundred rupees towards entertainment tax. The witness has deposed a tutored statement under the influence of Shri Yeshwant Rao Talnikar. It further appears from his statement that his duty at the cinema is to issue tickets. It finishes at about 11 P.M. It was not necessary for him to stay at the cinema as the keys of the cinema are taken to the house by Bhasker Rao Operator at the close of the cinema.

257. Shripat Rao (P.W. 51) resident of Jintoor states that his pan-shop is in the chowk bazaar. A public meeting was held by Samiti workers one day before the polling at chowk bazaar, wherein Harihar Rao, Dr. Mohril, Ankush Rao Ghare, Annaji Rao Gavane and other Samiti leaders delivered their speeches. V. D. Deshpande started his speech in the said meeting at about 12 P.M. and it continued when he closed his shop at 1 A.M. In cross examination he states that he usually closes his shop at 10 P.M. and the public moves in the streets till 1 P.M. He did not give any explanation as to why he kept his pan-shop opened that night till 1 A.M. The loud-speaker was fixed in the meeting and the police station was only at a distance of 1½ furlongs. If the meeting had continued upto 12 P.M., the police constables and the S.I. would have dispersed it. There is no record to show that the police had dispersed the meeting. The inference would be that the meeting had ended before 12 P.M. The petitioner should have examined P.S.I. Jintoor to whom Shri Shivaji Rao had made oral complaint and as alleged he had dispersed the meeting.

258. The non-petitioner has examined Bhasker Rao Pleader D.W. 22, Hari Har Rao Deshmukh pleader as D.W. 23.

Bhasker Rao states that one day before the polling V. D. Deshpande had addressed the audience in the public meeting. The meeting commenced at 8-30 P.M. and it continued till 11-30 P.M. Shri V. D. Deshpande spoke in the last. At the close of his speech he told that he had much to say but as he was permitted to speak only till 12 P.M. and as it being 11-30 P.M. so he concluded his speech. There is nothing particular in his statement to disbelieve it.

The other witness is Harihar Rao Deshmukh. He had presided the meeting. He states that the meeting commenced at 8-30 P.M. and it continued till 11-30 P.M. He delivered his speech first in the meeting, then Dr. Moril and then V. D. Deshpande. At the end of his speech V. D. Deshpande spoke that he had to say much about Sanyukta Maharashtra, but as it had passed 11-30 P.M. and next day being the polling day, he closed his speech. There is nothing particular in his statement to disbelieve it.

V. D. Deshpande (D.W. 69) has stated that he addressed one public meeting one day before the polling at Jintoor, Harihar Rao had presided over the meeting. Loud-speaker was installed in that meeting. It commenced at 8-30 P.M. and it ended at 11-30 P.M. He spoke in the last. At the end of his speech at 11-30 P.M. he spoke that he had to disburse the meeting before 12 P.M., so it was left on the public to defeat the congress.

The evidence adduced is insufficient and the objection is rejected.

*Objection No. 8 or Issue Nos. 10 and 14.*

259. The non-petitioner through his agents and workers canvassed within 100 yards from the polling booth. Nos. 2, 5, 9, 10, 16 and 20 at Jalna Town. It is further stated that a non-petitioner through his agents and workers pasted his wall poster on the prominent place near the entrance to the polling booth at village Kupta Taluq, Jintoor. The said poster was seized under panchnama by the concerned presiding officer on the written complaint of the Election Agent of the petitioner.

260. In amplification he has alleged that the said panchnama and the report together with the wall poster, which was seized by the presiding officer, were not sent to the Returning officer. The written complaint of the Election Agent of the petitioner was also not sent to the Returning Officer.

261. The petitioner has examined Shivaji Rao. His Election Agent (P.W. 61). He has stated that he inspected the polling booth building at Kupta and to his surprise he saw one big wall poster of the non-petitioner being prominently displayed at the entrance of the polling booth, which influenced the minds of the incomer voters. One Niverti Anna was found openly pointing to the voters towards the said poster. He further states that the said poster was seized under panchnama by the presiding officer on his application, but the application, the panchnama and the seized wall poster are not in the file. The witness has further stated that Shri Shrirang Kuptekar Vakil of Parbhani told him that the non-petitioner visited Kupta polling booth on his way from Hadgaon polling circle as not to take any action against the culprits as the parties have mutually agreed to close the matter.

262. The petitioner has examined Vithal Rao police constable (P.W. 44). It is true that he has stated in his preliminary statement that one panchnama about the seizure of wall poster was drawn and the distance between the polling booth and the place where the poster was pasted had been measured in his presence. The non-petitioner came there when Shivaji Rao (P.W. 61) had left the polling booth. But in cross examination he gave a contrary statement and stated that he was inside the polling booth and he does not know as to where from the wall poster was brought. The panchnama was not drawn in his presence. He heard that the seizure panchnamas of the wall poster was drawn outside the booth. The petitioner has not cross examined him declaring to have turned hostile. His statement being self contradictory is of no value.

263. The petitioner should have examined Shri Shrirang Kuptekar Vakil of Parbhani to prove the same. The solitary statement of the petitioner's election agents is not enough as he is an interested witness. Contrary to it, it appears from the statement of Shivaji Rao itself that he entered the prohibited area of 100 yards from the polling booth in his Jeep Car with the congress flag on the bonnet for which the presiding officer had taken objection. No doubt the witness has stated that the flag was folded at that time, but it is not acceptable. If the

congress flag was folded on the bonnet of his car when he entered the prohibited area, the presiding officer would not have objected. The fact of objection being taken by the presiding officer itself shows that the congress flag was not folded on his jeep car when he entered the prohibited area. The petitioner's election agent himself contravened the provisions of the election law and the blame was put on the non-petitioner.

253. The non-petitioner has examined Manik Rao (D.W. 20). He is the mali Patel of the village. He states that he was deputed at the polling booth for management. The polling booth was in the Government School building. Three police constables had been posted also for maintaining order. One day before the polling the police constables, the presiding officer and the police officer had come and inspected the polling booth. On the polling day again they inspected the booth and then the polling started at 8 A.M., which continued till 5 P.M. The management was looked by three constables, by him and the patwari. Within hundred yards from the polling booth no wall poster of the non-petitioner had been found pasted. No disturbance took place on the polling day on the polling booth and no panchnama was drawn.

His statement is supported by the statement of the presiding officer D.W. 88, who verifies his report Ex. D-144 which he had sent as a presiding officer polling booth Kupta. He states that no wall poster was seized and no panchnama was drawn. He also states that no application was submitted by Shivaji Rao to seize the wall poster of the non-petitioner as it was pasted within 100 yards from the booth.

The statement of D.W. 88 is well supported by the statement of P.W. 56. He has stated that he had not received the panchnama or the wall poster. He did not receive the report from the presiding officer that the wall poster was seized as it had been pasted within 100 yards from the booth.

254. The petitioner's own witness P.W. No. 56 has contradicted his contention that the non-petitioner's workers and agents canvassed within 100 yards from the polling booth. He states that he visited the polling booths of Town Jalna and Ambad and Bhokerdan constituencies and he did not find anything wrong in conducting the poll. Every polling booth was visited at least by one supervising officer on the polling day. No presiding officer reported to him about the illegal practices of the parties in conducting of the poll.

He is the responsible officer and when he has stated on oath that he did not receive any complaint, I see no force in the allegation. If it was a fact, the complaint would have been made to him when he had visited the polling booths, but as no such complaint was made to him, so the inference would be that it is an after thought allegation.

255. Besides the non-petitioner has examined Govind Rao s/o Nagnath Pund teacher (D.W. 4) resident of Jalna who states that he was the presiding officer, booth No. 20 Mastgadhi Primary school. Laxmanrao Dongra and Yeshwant Sadashiv Datar were the polling agents for the non-petitioner and Daya Bhai Shah and Anaraj were the polling agents for the petitioner on his booth. The polling started at 8 A.M. and closed at 5 P.M. He states further that he had shown the area of 100 yards to the police constables and the polling agents of the parties and had directed the policemen as not to allow any one except the voters to enter that area. He also stated that he did not receive any complaint from the police or the congress workers or polling agents that Samiti workers canvassed within 100 yards. No such incident happened. In cross examination he states that he moved now and then at intervals upto the door to see whether anybody was canvassing within hundred yards or making any disturbance within such limits. He states further that it is incorrect that the school boys had come within the limits of 100 yards and they were removed by him.

There is nothing on record to disbelieve his statement. Bhujangrao (P.W. 56) supports his statement.

256. Gangadharrao Pledar resident of Jalna (D.W. 2) states that there were two polling booths at Mastgadhi i.e. one at the Fort and the other at the Primary school. The Kila polling booth was within 100 yards from the office of Bharat Dalit Jati Sangh. A wall poster of the congress candidate was pasted on the front side of the wall of the Dalit Jati Sangh's office. He reported about it to the presiding officer as it was pasted within 100 yards from the Kila polling booth. He further states that neither he nor Uttam Chand Jain, nor Radha Kishan Jala canvassed for the non-petitioner within 100 yards from the polling booth Nos. 19 or 20 nor scolded the congress workers.

257. Uttam Chand (D.W. 5) has stated that it is incorrect that he or Shri Radha Kishan Lala or any other samiti worker canvassed within 100 yards from the polling booth on the polling booths Nos. 2, 5, 9, 10, 16 and 20 city Jalna.

258. D.W. 6 Mohd. Ismail states that Uttam Chand or Radha Kishan Lala did not canvass for the non-petitioner within the limits of 100 yards from the polling booths.

259. Syed Hussain *alias* Miyan Jani (D.W. 7) states that Radha Kishan Lala or Uttam Chand Jain did not canvass within the limits of 100 yards from the polling booth. He is the 4 annas Congress member and worker. I see no reason to disbelieve his statement.

260. Rangnath Rao pleader Jalna (D.W. 10) states that in the bye-election he worked for the non-petitioner. On the polling booth Nos. 16 & 12 Jalna Samiti workers did not canvass within the limits of 100 yards.

261. Radha Kishan Lala D.W. 59 states that the workers meeting had held in the Samiti office one day before the polling and the polling agents had been directed to bring into the notice of the presiding officer if any disturbance or irregularity takes place at the polling booth and they should not move from the booth. He states that he was the polling agent for the non-petitioner on the polling booth No. 14 (Ashurkhana Kabadi Mohalla Jalna). He was there from 8 A.M. to 12 Noon. He then went to take his meals on coming of his reliever. He returned after 1/2 hour to the booth and remained till 5 P.M. He categorically denied to have canvassed for the non-petitioner within 100 yards on the polling day on booth Nos. 2, 5, 9, 10, 16 or 20.

262. It appears that the presiding officer of the polling booth No. 16 Jalna has made a report Ex: P-125 that at about 11-15 A.M. a constable reported that *the four persons possibly congress workers were canvassing within 100 yards area from the polling booth.* The police constable adjusted the matter and every thing passed away smoothly. Their names were Babulal s/o Bhaoolal, (2) Sheshrao s/o Uttam Rao, (3) Ratanlal s/o Kishansa, (4) Baboo Lal s/o Chagansa. This report clearly shows that the petitioner's workers had canvassed within 100 yards from the polling booth and negatives the allegation of the petitioner that the non-petitioner's workers and agents canvassed within hundred yards. Besides it was not possible to canvass within 100 yards as the police constables had been posted with specific directions that they should not allow any one to canvass within 100 yards and should not allow other persons than the voters to enter within the said area.

The allegation is an imaginary one and as the evidence is insufficient so I reject this objection.

*Objection No. 9 or Issue No. 15*

263. The non-petitioner through his polling agents instigated the voters at Jalna Town as not to cast ballot papers in the ballot boxes and to hand them over to Samiti workers.

264. The petitioner has examined P.W. 62 Balaji who states that Nirkhi Vakil had asked him to bring back the ballot paper outside the booth without casting it in the ballot box and he would be paid for the same. He acted accordingly and brought the ballot paper outside the booth, without casting it in the ballot box. The samiti worker took it from him and paid him the money. *In cross examination he states that he came to the court as he was summoned and as he was told that he would be sentenced if he would not attend the court.* As a matter of fact he was not summoned through court. This fact itself shows as to how he was misguided and tutored to depose in favour of the petitioner. He has further stated that while he was going to vote on the polling day the Samiti worker had given him the identity chit and had asked him to vote to the Samiti candidate saying that it would be beneficial to the poor. He did not tell him (the deponent) anything else. His statement is self contradictory and is unreliable. The petitioner has stated in his statement that he is unable to say as to who had distributed the money to the voters to bring back the ballot paper without casting it in the ballot box. Obviously he is a concocted witness.

265. Bhujang Rao (P.W. 56) the Returning officer of this bye-election has stated that Ex: D-82 is the result sheet which shows that on 21 polling booths of town Jalna no ballot paper was rejected. He has further stated that he does not remember whether more than one ballot papers were found in the ballot boxes folded together and any such complaint was made to him at the time of counting by Shivaji Rao (P.W. 61).

This statement wholly contradicts the petitioner's allegation.

266. The non-petitioner has examined Gangadhar Rao pleader D.W. 2 who states that he or any other worker had not directed any voter to bring back the ballot paper without casting the same in the ballot box and that he would be paid Re. 1/- for the same.

267. Uttam Chand Mohanlal Shroff (D.W. 5) resident of Khadrabad Taluq: Jalna also states that it is absolutely incorrect that he or any other samiti worker or the election agent induced the voters by paying them Re. 1/- to bring back the ballot paper without casting in the ballot box, for putting the same in the ballot box of the non-petitioner on the same booth or on any other booth. He is the Secretary of the Shroff Association Jalna since last 5 years. He is looked with respect among the merchants. The merchants including the congress members observed Hartal when he was beaten by a goldsmith boy in the bazar. There is nothing particular in the cross examination to disbelieve his statement.

268. Ambadas (D.W. 8) states that he or any other worker of the samiti did not ask the voters to bring back the ballot papers without casting them in the ballot boxes and collected ballot papers on paying Re. 1/- for each ballot.

269. The non-petitioner has examined Sadashiv Rao Nirkhi advocate (D.W. 39) also who states that he did not ask Balaji P.W. 62 or any other voter to bring back the ballot paper without putting it in the ballot box and that he would be paid one rupee for the same.

270. There is no record to disbelieve the statement of the Returning Officer P.W. 56 and the evidence adduced by the non-petitioner. The allegation is not proved so it is rejected.

*Objection No. 10 or Issue No. 17.*

271. The non-petitioner through his agents and workers manipulated to strike off with red-pencil the names of several voters from the official lists in spite of the fact that their names were not included in the list of deletion.

272. The petitioner has examined Shri Bhujang Rao Collector P.W. 56 who states that the Electoral Registration Officers (the Tahsildars) had been directed to prepare six working copies of the electoral Rolls boothwise and to employ clerks and other persons on daily wages for performing that work. The working copies were prepared after striking out the names of those persons whose names were mentioned in the deletion list from the lists of voters. The Presiding officers normally presume that the names so struck off, are mentioned in the deletion list and they would not normally issue ballot papers to them. But in the case of doubt or challenge the presiding officers refer to the deletion list and they give the decision. He further states that he had received one such complaint at one of the polling booths of Jalna Town, most probably in the presence of Rustomaji Congress M.L.A. from Jalna. The identity slip was not given to one lady voter, whose name was not in the deletion list and her name had been struck off in the working copy of the voters list. He further states that he directed the chit writer to issue the identity slip as she was entitled to vote. The identity slip was issued to her on his order. There were some other complaints also of this nature at Jalna on other polling booths. The Presiding officers might have taken similar action as the same was included in the training course. His statement is well supported by Ex: P-127. The name of one Indra Bai Girdhar Singh S. No. 117 Block No. 2 had been struck off in the voters list by mistake, but on application as she was alive and her name was not in the deletion list, she was allowed to vote by the presiding officer booth No. 16 Jalna. P.W. 56 states further that the working copies of the voters lists are prepared correctly by the Tahsildars under his instructions. He did not receive any complaint that any voter's name was deliberately struck off from the voters lists colluding with the non-congress workers.

This witness is a responsible Government officer and when he states on oath that he did not receive any complaint that the voter's name was deliberately struck off from the voter's list colluding with the non-congress workers then I see no force in the contention of the petitioner. If anybody's name had been struck off by mistake, it was immediately rectified on complaint and the ballot paper was issued to him. It would be wrong to say that the non-petitioner or his workers induced the Govt. employees who were engaged in preparing the working voter's lists to strike off the names of the voters from the working lists.

Moreover there were more than three lakhs voters and one cannot say before hand as to who will vote for whom. As stated by the Returning Officer (the



Collector) that the working lists are prepared under the direct supervision of the Tahsildars, who are Govt. servants, it is not possible for the public to get the names of the congress voters struck off from the voters lists.

273. Sham Sunder Rao Deputy Collector Parbhani (D.W. 77) states that he was the Tahsildar of Jalna at the time of bye-election. It is the duty of the Tahsildar to prepare the corrected voter's lists according to deletion and addition list and to distribute them to every polling booth. He states with assertion that it is absolutely incorrect that the clerks and the persons who had been engaged for preparing the correct voter's lists had conspired with the workers of the non-petitioner and scratched the names of the voters who were intending to vote for the congress candidate, though their names were not mentioned in the deletion lists. The Tahsildars supervise the work of correction of Electoral Rolls.

274. The petitioner should have examined any one of the clerks or other persons who had been engaged for the preparation of working copies of the voter's lists to say on oath that the non-petitioner or his agents or workers had induced him to strike off the names of certain congress voters or at least he should have examined any congress voter that his name was deliberately struck off as he was a congress man. There is no strength in this objection. *It is a creation of the suspicious mind of the petitioner or his Election Agent Shri Shivaji Rao who is the son-in-law. I over rule this objection.*

Objection No. 11 or Issue No. 5

275. The non-petitioner got published the false news items in Marhatwada and in Marhata that the petitioner claims the votes on the ground of being a Marhata and that the petitioner had asked some of the voters as not to cast vote to the non-petitioner as he being a Brahmin for creating a feeling in the minds of the voters about the petitioner to be a communal minded.

276. This is a very vague allegation. To form a corrupt practice there should be a *systematic appeal* by a candidate or his agent or by any other person to vote or refrain from voting on the grounds of caste, race, community or religion for the furtherance of the prospect of that candidate's election. If any-body says about the rival candidate that he is of communal mind, it is not a corrupt practice u/s 123(3) of the Act.

277. The learned counsel for the petitioner relies on 2 news items published in the newspaper Marhatwada dated 16th January 1958 and 26th January 1958. They are marked as Ex: P-25 and Ex: P-47 respectively. I think it proper to mention the English translations of the relevant portions of the said news items.

278. The news item published in newspaper Marhata dated 16th January 1958 (Ex: P-28) reads as below:

"unbalanced propaganda of congress men against Samiti".

"Says that Shri Ghare of Samiti is a Brahmin"

"An information is received from the Samiti workers about the mischievous propaganda of the congress workers. They informed that the congress leaders were falsely propagating that Shri Ankush Rao is a brahmin by caste and Marhata should not cast their vote to him. This incident unexpectedly revealed and came to the notice from a reliable source."

"Samiti workers were staying in a house, where some congress workers also came. They started canvassing for the congress candidate among the members of that house but they frankly told them that they would vote for Samiti candidate. The congress workers then told them that nothing was wrong if any Marhata candidate would have contested the election for Samiti but Samiti has proposed its candidate. Shri Ankush Rao Ghare who is a Brahmin. The members of the house immediately told them that it is absolutely false as Shri Ghare is their relative and is Marhata by caste."

279. The news item dated 26th January 1958 published in the same newspaper marked as Ex: P-47. It reads as below:

"The news which was published in Marhatwada dated 16th January 1958 had been from Samiti people. The news was that the congress men started to propagate that Shri Ghare is not a Marhata by caste while Shri Sawnekar is a Marhata".

In reply to the above news one statement was published by Ram Gopal Navandar and Shivabhai of Jalan on behalf of congress in daily newspaper "Lokmanya". It was stated in that statement that the congress men always express their caste to be congress and not their personal caste such as Marhata or Brahmin.

Samiti office of Jalna received this information and it was found that the aforesaid challenge of the congress men published through the statement was cent percent baseless. They have no other idea except than that of communal feelings.

Shri Shanker Rao Chawan, Dy. Minister for Revenue visited village Ashti where he had held public meeting. In which he openly appealed the audience to caste vote for congress candidate Shri Baba Saheb Sawnekar as he is a Marhata. This meeting was held on 18th January.

Just after the congress meeting, a meeting of the Samiti was held in which Shri Waman Rao Deshmukh and Shri R. P. Deshmukh delivered the speeches and condemned Shri Chawan for the communal challenge which he had given.

280. Shri Anant Bhale Rao (P.W. 13) the editor of Marathwada states that he published the news items in his paper, received from his staff after verifying. The news items which are published are correct. The news items Ex. P-28, P-47 are correct so far as they are received.

281. The learned counsel for the petitioner argues that the non-petitioner systematically appealed the voters through Anant Bhale Rao the editor of the newspaper Marthwada and his election agent to vote for him as he being of marhata caste and not to vote to the petitioner as he is a communal minded candidate. He argues to infer the same from the above two news items. I considered over them and I am unable to understand as to how such inference can be drawn from them. It does not appear from them that Bhale Rao or the Samiti workers had appealed the voters to vote for the non-petitioner as he is marhata by caste. The news items dated 16th January 1958 has been published to contradict the false propaganda of the congress that the non-petitioner is a brahmin, and the news item dated 26th January 1958 had been published to contradict the speech of Shri Shanker Rao Chawan that the congress men show their caste congress and not their personal caste marhata or brahmin.

282. It is argued that it is an indirect way of appealing the marhata voters to vote for him on the ground of caste. The petitioner is also a Marhata, so no question of appealing the voters on ground of caste arises.

283. The learned counsel relied on 9 Election Law Reporter page 149 (Lachhi Ram Versus Jamuna Parshad and others). It is a judgment of the Election Tribunal but it was upheld by the Supreme Court. I considered over it. In it there was an appeal to the voters in the following words:

"Do not forget Chaturbhuj Chambar who is born in the family of devotee of Raidas. Tell every body that we will elect only Chambar brother (Subse Kahdo Ki Ham to Chambar Bhai Ko Hi Member chunenge)".

"The congress has foisted upon you a representation of Kori caste who has not done any good to you it again wants to have the same man of Kori caste as your representative.

"I specially pray Aharwar, Subharwar Jatal brothers.....if you are born in Raidas Vansh have faith in your caste brother and caste for your caste brother who is standing on behalf of Hindu Mahasabha."

284. It is evident from it that in that case the candidate had emphasised that his opponent was a Kori and he himself was a Chambar and had appealed the voters who had born in Raidas Vansh to vote for him (the Chambar brothers). The learned Members of the Tribunal and their Lordships of the Supreme Court correctly held that it was a systematic appeal on the ground of caste and the candidate committed the corrupt practice. In the instant case there is no such appeal. The news items had been published by the editor to contradict the false propaganda of the congress workers. Both the candidates belong to marhata community, so the cited ruling is not applicable with the instant case.

285. The objection has not been proved beyond doubt. The issue No. 5 is therefore decided against the petitioner and in favour of the non-petitioner.

General or Issue No. 19.

286. I have discussed the evidence of the parties on all the issues and concluded that the allegations of the petitioner are baseless and the creation of his suspicious mind. A point may arise in the minds of the people as to why the petitioner had not succeeded in the election. He was holding a responsible post in the Congress party. He was the President of the Marhatwada Pradesh Congress Committee. The non-petitioner had been defeated in the 2nd General Election by 8,000 votes in his home constituency. All the six L.A. Seats of the Jalna Parliamentary Constituency had been secured by the Congress candidates in the General Election of 1957. Late Shri Tayabji had secured 35,000 more votes than Shri Barrister Khobra Gade, the Samiti candidate, in the same Jalna Parliamentary Constituency. The petitioner contends that he was defeated due to the non-petitioner's corrupt practices stated in the petition. But in my opinion his contention is not correct.

287. The same point was discussed in the meeting of the Executive Body of the Marhatwada Pradesh Congress Committee held at the residence of Shri Bhagwant Rao Gadhe, the Minister for Forest. The abstract of it was published in the Free Press Journal, dated 24th February 1958. It is marked as Ex. D-1. It reads as below:—

"The defeat of the President of the Marathwada Pradesh Congress Committee at the hands of a Samiti candidate in the recent bye-election from the Jalna Parliamentary Constituency was today attributed to the complacency of Congress workers in Marathwada."

"This was the view expressed at a meeting of the Marathwada Pradesh Congress Committee Executive held at the residence of Shri Bhagwant Rao Gadhe, Minister for Forest. Shri Baba Saheb Sawnekar, president of the committee presided over the meeting."

"The meeting had been called to analyse the bye-election to the Lok Sabha from the Jalna constituency held on February 2, when Shri Sawnekar was defeated by Shri Ankush Rao Ghare (P. & W.—Samiti). The vacancy had been caused by the demise of Shri S. F. Tayabji (Congress)."

Speakers participating in the meeting expressed the view that the Congress defeat in the bye-election was not on account of any pro-Samiti swing in public opinion in Marthwada but because of insufficient propaganda work by the Congress workers. The Congress success in the General Election had made the workers complacent.

288. The petitioner has examined Shri Bhagwant Rao Gadhe, the Forest Minister who has stated that one meeting of the Congress Committee Executive Body of the Marathwada Pradesh Congress Committee was held at Bombay at his residence after bye-election in the first week of March 1958 wherein organisational matters, financial condition of the organisation, Youth Mahila and Trade Union problems had been discussed. The causes of failure of Congress in the bye-election were also discussed. The main reason of the failure of Congress in the bye-election was that the opposition (Samiti) could successfully manipulate the corrupt mal-practices and the Congress workers could not detect them. He states further that he had prepared a brief note of the points discussed in the meeting and telephoned it to the press. Ex. D-1 is nearly correct, but it does not include the reference which the (Congress workers) made against the opposition's mal-practices. He states that he had positively referred the mal-practice of the opposition in the note, telephoned to the press. He is surprised to see that it was not published.

With due respect to the Hon'ble Minister Shri Bhagwant Rao Gadhe his statement that the mal-practices of the opposition used in the Jalna Parliamentary bye-election had been discussed in the meeting, is not acceptable as it is not supported by the record. The deponent should have filed the brief note which he had prepared and telephoned to the office of the Free Press Journal. The petitioner should have filed the copy of the minutes of the said meeting. There is no record to disbelieve the news item marked Ex. D-1. It is not proved that the editor of the Free Press Journal belongs to Samiti party. No news item was published by the Congress party to show that the mal-practices of the opposition had been discussed in the meeting. It appears that he has stated this to support the contention of the petitioner.

292. The non-petitioner has examined Rajeshwar Pleader D.W. 11. He states that he was the active member of the congress at the time of bye-election. He was the member of the working committee of the Taluq Congress committee, Partur. One month before the polling one group meeting of the congress workers was held at the house of Baba Saheb Ambhure. About 50 workers had attended the meeting. Shri Baba Saheb Sawnekar, Shri Narayan Rao Goregankar, Shri Bhim Rao Watur Kar, Shri Yeshwant Rao Musalekar, Shri Devidas Rao Rathi, Shri Jagannath, Shri Pandit Rao Kulkarni Shri Bismilla Khan, Shri Noorudding and others had attended the meeting. In the said group meeting it was settled that Rangnath Rao Bangale and Bhim Rao Waturkar would look after the propaganda and canvassing work and under their instructions and under their directions the local workers of Partur would work. He states further that the congress workers had the spirit to work but as Rangnath Rao Bangale who was not of Partur of Taluq was made incharge of canvassing work at Partur Taluqa and his (Rangnath Rao Bangale's) behaviour was not good with the workers, so the workers worked half heartedly. Shri Baba Saheb was unpopular as he had become the dictator and was favouring certain persons of certain castes.

P.W. 13 states that the petitioner as the President of the Marhatwada Pradesh Congress Committee favoured certain new comers ignoring the rights and sacrifices of the old workers, so they had complained to Shri Yeshwant Rao Chowan. It is evident from the above two statements that there was a feeling of discontent among the congress workers as their services and sacrifices had been ignored and new comers had been given the responsible posts and so they had not worked and canvassed whole heartedly for the petitioner. It is beyond doubt that the workers had not worked whole heartedly in the Jalna Parliamentary bye-election either because they were over confident of their success in the election or as their past services had been ignored and the new comers had been given responsible posts in the organisation. It appears to me that it was one of the main causes of the petitioner's defeat.

293. The other cause of his defeat appears to be as discussed already that the vacant seat was of the muslim candidate and the congress organisation ignoring the feelings of the muslims had set up a non-muslim Marhata candidate, so the muslims had decided as not to vote to any candidate.

294. The third main cause of the petitioner's defeat appears that the popular demand of the Marhati speaking public of the Marhatawada about the formation of Sanyukat Maharashtra with Bombay was over looked by the congress Government. Sanyukat Maharashtra Samiti formed for its achievement. 105 persons shed their blood for that cause. The non-petitioner being the candidate of that party, the majority of the voters cast their votes for the non-petitioner irrespective of his educational qualification and his popularity due to his past services.

295. The fourth main cause was that the petitioner was not popular in the general public. He might be holding a high post in the congress organisation, but he was badly defeated in the general election of 1951 when he had stood from his Home constituency for Legislative Assembly Seat. He states in his statement that he was defeated by 8 or 9 thousands votes. It was the first election after Police Action. The congress party was in full power. In spite of it the petitioner was badly defeated. This fact clearly shows that the petitioner was not popular in the common public.

296. The election was fought fairly and honestly by the non-petitioner. No malpractices were used by him. The purity of his election is above suspicion. The allegations of the petitioner are baseless and creation of his suspicious mind. The petition was unnecessarily filed. There is no strength in it. It is liable to be dismissed. The non-petitioner bore heavy expenses in opposing the petition, so he is entitled to costs.

#### ORDER

The petition is *Dismissed*. The petitioner, Bhim Rao alias Baba Saheb Sawnekar should pay One thousand rupees as costs to the non-petitioner Ankush Rao Ghare.

(Sd.) RAI SURAJ CHAND, B.A., LL.B., Member,  
Election Tribunal and District & Sessions Judge,  
Parbhani.

[No. 82/3/58/20029.]

By order,  
C. B. LAL, Under Secy.

# MINISTRY OF FINANCE

## (Department of Economic Affairs)

New Delhi, the 19th November 1959

**S.O. 2605.**—Statement of the Affairs of the Reserve Bank of India, as on the 13th November 1959

### BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid up . . . . .	5,00,00,000	Notes . . . . .	19,64,21,000
Reserve Fund . . . . .	80,00,00,000	Rupee Coin . . . . .	2,30,000
National Agricultural Credit (Long-term Operations) Fund.	30,00,00,000	Subsidiary Coin . . . . .	9,35,000
National Agricultural Credit (Stabilisation) Fund	4,00,00,000	Bills Purchased and Discounted :—	
Deposits :—		(a) Internal . . . . .	..
(a) Government—		(b) External . . . . .	..
(1) Central Government . . . . .	50,43,74,000	(c) Government Treasury Bills . . . . .	19,01,76,000
(2) Other Governments . . . . .	18,84,83,000	Balances held abroad* . . . . .	39,87,97,000
(b) Banks . . . . .	86,55,28,000	**Loans and Advances to Governments . . . . .	25,82,79,000
(c) Others . . . . .	119,66,16,000	Other Loans and Advances† . . . . .	81,17,86,000
Bills Payable . . . . .	17,40,69,000	Investments . . . . .	243,28,92,000
Other Liabilities . . . . .	27,73,06,000	Other Assets . . . . .	10,68,60,000
<b>TOTAL</b> . . . . .	<b>439,63,76,000</b>	<b>TOTAL</b> . . . . .	<b>439,63,76,000</b>

Dated the 18th day of November, 1959.

\*Includes Cash and Short term Securities.

\*\*Includes Temporary Overdrafts to State Government

†The item 'Other Loans and Advances' includes Rs. 16,00,000—advanced to scheduled banks against usance bills under Section 17(4) (c) of the Reserve Bank of India Act.

An account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 13th day of November, 1959.

ISSUE DEPARTMENT

LIABILITIES		ASSETS	
	Rs.		Rs.
Notes held in the Banking Department . . . . .	19,64,21,000	A. Gold Coin and Bullion :—	
Notes in circulation . . . . .	1696,01,66,000	(a) Held in India . . . . .	117,76,03,000
Total Notes issued . . . . .	1715,65,87,000	(b) Held outside India . . . . .	..
		Foreign Securities . . . . .	163,00,89,000
		TOTAL OF A . . . . .	280,76,92,000
		B. Rupee Coin . . . . .	133,21,39,000
		Government of India Rupee Securities . . . . .	1301,67,56,000
		Internal Bills of Exchange and other Commercial paper . . . . .	..
TOTAL LIABILITIES . . . . .	1715,65,87,000	TOTAL ASSETS . . . . .	1715,65,87,000

Dated the 18th day of November, 1959.

H. V. R. JENGAR,  
Governor.

[No. F. 3 (2) BC/59].

A. BAKSI, Jt. Secy.

**CENTRAL BOARD OF REVENUE****INCOME-TAX**

*New Delhi, the 16th November 1959*

**S.O. 2606.**—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Income-tax Act, 1922 (11 of 1922) and in partial modification of all previous notifications on the subject, the Central Board of Revenue hereby directs that with effect from the 5th November, 1959 (afternoon) Shri P. T. Ranadive, a Commissioner of Income-tax, shall perform all the functions of Commissioner of Income-tax in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as are comprised in the Income-tax Circles, Wards or Districts in the State of Madhya Pradesh and the districts of Nagpur and Bhandara.

Provided that he shall also perform his functions in respect of such persons or of such cases as have been or may be assigned by the Central Board of Revenue to any Income-tax Authority subordinate to him.

Provided further that he shall not perform his functions in respect of such persons or of such cases as have been or may be assigned to any Income-tax Authority outside his jurisdictional area.

While performing the said functions the said Shri Ranadive shall be designated as the Commissioner of Income-tax, Madhya Pradesh and the districts of Nagpur and Bhandara with headquarters at Nagpur.

**EXPLANATORY NOTE**

Note.—The amendments have become necessary due to change in the incumbent of Commissioner's post.

(The above note does not form a part of the notification but is intended to be merely clarificatory).

[No. 118 (F. No. 55/27/59-IT).]

**S.O. 2607.**—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Income-tax Act, 1922 (11 of 1922) and in partial modification of all previous notifications on the subject the Central Board of Revenue hereby directs that with effect from 5th November, 1959 (forenoon) Shri G. S. Srivastava a Commissioner of Income-tax, shall perform all the functions of Commissioner of Income-tax in respect of such areas or of such persons or classes of persons or such incomes or classes of incomes or such cases or classes of cases as are comprised in the following Income-tax Circles, Wards and Districts namely:—

1. All Income-tax Wards and Circles at Poona.
2. All Income-tax Wards in South Satara District.
3. All Income-tax Wards and Circles in Kolhapur District.
4. All Income-tax Wards in North Satara District.
5. All Income-tax Wards and Circles in Thana District.
6. All Income-tax Wards in Kolaba District.
7. Ratnagiri District.
8. All Income-tax Wards and Circles in Sholapur District.
9. All Income-tax Wards in Ahmednagar District.
10. All Income-tax Wards and Circles in Akola District.
11. Yeotmal District.
12. All Income-tax Wards in Amravati District.
13. All Income-tax Wards in Wardha for Wardha and Chanda Districts.
14. All Income-tax Wards in Aurangabad for Aurangabad and Bhir Districts.
15. Khangaon for Buldhana District.
16. All Income-tax Wards in Nanded for Nanded and Parbhani Districts.
17. Latur for Osmanabad District.
18. Nasik Circle.
19. Jalgaon Circle.
20. Dhulia Circle.

Provided that he shall also perform his functions in respect of such persons or of such cases as have been or may be assigned by the Central Board of Revenue to any Income-tax Authority subordinate to him.

Provided further that he shall not perform his functions in respect of such persons or such cases as have been or may be assigned to any Income-tax Authority outside his jurisdictional area.

While performing the said functions the said Shri Srivastava shall be designated as the Commissioner of Income-tax, Bombay South with headquarters at Poona.

#### EXPLANATORY NOTE

Note.—The amendments have become necessary due to a change in the incumbent of Commissioner's post.

(The above note does not form a part of the notification but is intended to be merely clarificatory).

[No. 119 (F. No. 55/27/59-IT).]

**S.O. 2608.**—In exercise of the powers conferred by sub-section (6) of section 5 of the Indian Income-tax Act, 1922 (11 of 1922), the Central Board of Revenue hereby makes the following further amendments in the Schedule annexed to its notification S.R.O. 1214—No. 41—Income-tax dated the 1st July, 1952:—

In the said Schedule, after S. No. 21H, the following entry shall be inserted, namely:—

1	2	3	4	5	6
21-I	Employees of Protos Engineering Co. (Private) Ltd, Bombay, stationed anywhere in the taxable territories.	6th I.T.O., Salary Branch II, Bombay.	I.A.C., Range, Bombay.	'C'A.A.C., 'D' Range, Bombay.	Commissioner of Income-tax, Bombay City I.

[No. 120 (F. No. 55/164/59-IT).]

*New Delhi, the 23rd November, 1959*

**S.O. 2609.**—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Income-tax Act, 1922 (11 of 1922), and in partial modification of all previous notifications on the subject, the Central Board of Revenue hereby directs that with effect from 16th November, 1959 (forenoon), Shri S. A. L. Narayana Row, a Commissioner of Income-tax, shall perform all the functions of Commissioner of Income-tax in respect of such areas or of such persons or classes of persons or such incomes or classes of incomes or such cases or classes of cases as are comprised in the Income-tax Circles, Wards or Districts in the Bombay City and Bombay Suburban Districts specified below:—

1. Companies Circle I (All Sections).
2. Companies Circle II (All Sections).
3. Companies Circle III (6).
4. Companies Circle IV (All Sections).
5. Bombay Circle I (E.P.T.).
6. A-I Ward.
7. A-III Ward.
8. A-IV Ward.
9. A-V Ward.
10. Market Ward.
11. C-II Ward.
12. Salaries Branch I.
13. Salaries Branch II.



14. Bombay Refund Circle.
15. Non-residents Refund Circle.
16. Foreign Section.
17. Income-tax-cum-Estate Duty Circle.
18. Special Survey Circle, I.
19. Special Survey Circle, IV.
20. Special Investigation Branch.
21. Evacuees Circle, I.

Provided that he shall also perform his functions in respect of such persons or of such cases as have been or may be assigned by the Central Board of Revenue to any Income-tax Authority subordinate to him.

Provided further that he shall not perform his functions in respect of such persons or such cases as have been or may be assigned to any Income-tax Authority outside his jurisdictional area.

While performing the said functions the said Shri Narayana Row shall be designated as the Commissioner of Income-tax, Bombay City I with headquarters at Bombay.

#### *Explanatory Note*

NOTE.—The amendments have become necessary due to the change in the incumbent of the Commissioner's post.

(The above note does not form a part of the amendments but is intended to be merely clarificatory).

[No. 121 (F. No. 55/27/59-IT.)]

D. V. JUNNARKAR, Under Secy.

#### *CUSTOMS*

*New Delhi, the 28th November 1959*

**S.O. 2610.**—The following draft of an amendment in the Sea Customs Duties (Provisional Assessment) Rules, 1957, which the Central Board of Revenue proposes to make in exercise of the powers conferred by section 29-B of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, is published as required by sub-section (4) of the said section, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 1st January, 1960.

Any objection or suggestion which may be received from any person with respect to the said draft and before the date specified will be considered by the Central Board of Revenue.

#### *Draft Amendment*

In the said Rules,—

(i) In rule 4,—

(a) in sub-rule (3), after the words "as estimated by him" the following shall be inserted, namely:—

"provided the owner executes a bond with such sureties, or security or both as the Collector may require undertaking to produce before him further documents and proof regarding the real value or quantity of the goods within one month and also undertaking to pay the difference between the duty provisionally assessed, and the duty finally assessed. The Bond(s) will be executed as per enclosed forms III A, III B and IIIC";

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:—

"(4) If the owner fails to produce the further documents or proofs before the expiry of the said period or if the Collector is satisfied that the further documents or proof are not adequate for determining the real value or quantity of the goods, the Collector shall make the final assessment on the basis of the value and quantity determinable from the available documents";

(2) after rule 8, the following rule shall be added, namely:—

“9. Notwithstanding anything contained in these rules, the Collector may permit any owner who is required by these rules to execute a bond in any of the prescribed forms, to execute a general bond to cover a series of transactions in such form, with such surety or sufficient security, in such amount and under such conditions as the Collector approves.”

#### FORM III-A

See rule 4(3)

To

The President of India.

In consideration of the Collector at.....(hereinafter called the ‘Collector’) agreeing at my/our request to make provisional assessment under rule 4(3) of the Sea Customs Duties (Provisional Assessment) Rules, 1957 (hereinafter referred to as the Provisional Assessment Rules, 1957) in respect of the goods imported by me/us.

I/We.....of.....(hereinafter called the ‘owner’) am/are bound to the President of India to pay to the President of India on demand and without demur the difference, if any, between the duty provisionally assessed by the Collector under rule 4(3) of the Provisional Assessment Rules, 1957 and the duty finally assessed by the Collector in respect of the said goods under rule 4(4) of the said Rules for which payment I/we bind myself/ourselves and my/our legal representatives.

The condition of this bond is that if the said owner and his/their representative(s) shall produce before the Collector further documents and proof regarding real value or quantity of the goods imported as aforesaid within one month and shall observe all the provisions of the Provisional Assessment Rules, 1957 in respect of the goods for which duty has been assessed;

And if the said owner pays the difference between the duty finally assessed under rule 4(4) of the Provisional Assessment Rules, 1957 and the duty provisionally assessed under rule 4(3) of the said Rules:

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

I/We declare that this bond is given under the orders of the Central Government for the performance of an act in which the public are interested.

Place:

Signature of owner:

Date:

Witness (1)

Address (1)

Occupation (1)

(2)

(2)

(2)

Accepted by me this..... day of.....

Collector of Customs.....  
for and on behalf of the President of India.

#### FORM III-B

See rule 4(3)

*Form of Surety Bond on provisional assessments*

(Delete the letters and words not applicable)

To

The President of India.

In consideration of the Collector at.....(hereinafter called the ‘Collector’) agreeing at the request of Mr./Messrs.....to make provisional assessment under rule 4(3) of the Sea Customs Duties (Provisional Assessment) Rules, 1957 (hereinafter referred to as the Provisional Assessment Rules, 1957) in respect of the goods imported by Mr./Messrs ..... namely .....

I/We .....of.....(hereinafter called the surety) am/are bound to the President of India in the sum of Rs.....to be paid to the President of India for which payment I/We bind myself/ourselves and my/our legal representatives.

The condition of this bond is that if Messrs.....and their representatives shall observe all the provisions of the Provisional Assessment Rules, 1957 in respect of the goods for which duty has been assessed;

And if Messrs.....pay the difference between the duty finally assessed under rule 4(4) of the Provisional Assessment Rules, 1957, and the duty provisionally assessed under rule 4(3) of the said Rules:

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

I/We declare that this bond is given under the orders of the Central Government for the performance of an act in which the public are interested.

Place:

Signature of surety:

Date:

Witness (1)  
(2)

Address (1)  
(2)

Occupation (1)  
(2)

Accepted by me this.....day of.....

Collector of Customs,.....  
for and on behalf of the President of India.

FORM III-C

See rule 4(3)

Form of Bond (with Security) on provisional assessment  
(Delete the letters and words not applicable)

To

The President of India

In consideration of the Collector at.....(hereinafter called the Collector) agreeing at my/our request to make provisional assessment under rule 4(3) of the Sea Customs Duties (Provisional Assessment) Rules, 1957 (hereinafter referred to as the Provisional Assessment Rules, 1957), in respect of the goods imported by me/us, namely,

.....

I/We.....of.....[hereinafter called the obliger(s)] am/are jointly and severally bounded to the President of India in the sum of Rs.....to be paid to the President of India for which payment I/We jointly and severally bind myself/ourselves and my/our legal representatives.

Whereas the Collector has required the obliger(s) to deposit as guarantee for the amount of this bond the sum of.....rupees in cash.

The securities as hereinafter mentioned of total face value of.....rupees endorsed in the Collector's favour namely.....

And whereas the obliger(s) has/have furnished such guarantee by depositing with the Collector the cash/securities as above mentioned.

The condition of this bond is that if the obliger(s) and his/their legal representatives shall observe all the provisions of the Provisional Assessment Rules, 1957 in respect of the goods for which duty has been assessed;

And if the obliger(s) pay the difference between duty finally assessed under Rule 4(4) of the Provisional Assessment Rules, 1957 and the duty provisionally assessed under Rule 4(3) of the said rule;

This obligation shall be void.

Otherwise and on breach or failure in the performance of any part of this condition, the same shall be in force.

And the President shall, at his option, be competent to make good all losses howsoever arising either from the account of the guarantee deposit or by enforcing his rights under the above written bond or by both.

I/We declare this bond is given under the orders of Central Government for the performance of an act in which public are interested.

Place:

Signature(s) of Obliger(s),

Date:

Witness (1)  
(2)

Address (1)  
(2)

Occupation (1)  
(2)

Accepted by me this ..... day of ..... 19 .....

Collector of Customs,.....

for and on behalf of the President of India.

[No. 157(F. No. 21/92/57, Cus-IV).]

M. A. RANGASWAMY, Secy.

# OFFICE OF THE ASSTT. COLLECTOR OF CENTRAL EXCISE AND LAND CUSTOMS, GOA FRONTIER DIVISION, BELGAUM

## SHOW CAUSE NOTICE

*Belgaum, the 16th November, 1959*

Shri Bhiku Vishnu Kumarpant of Palvale,  
Cancona, Goa.

Shri S. N. Desai of Palvale,  
Cancona, Goa.

**SUBJECT:**—*Seizure of 7 O'Clock Blades, Press Studs, etc., on 9th January 1959.*

**S.O. 2611.**—Whereas there is reason to believe that the goods mentioned in the sub-joined schedule were imported into India from Goa by a route other than the one prescribed under Section 4(b) of the Land Customs Act, 1924, without a permit as required under Section 5(1) of the Land Customs Act, 1924.

And whereas there is reason to believe that the goods mentioned in the schedule were imported from Goa into the Indian Union in contravention of:

1. The Government of India, Ministry of Commerce and Industry, Import (Control) Order No. 17/55, dated 7th December 1955, as amended, issued under Sections 3(a) and 4A of the Import and Export (Control) Act, 1947, and further deemed to have been issued under Section 3(a) of the Sea Customs Act, 1878.

And whereas it appears that the acts of S/Shri B. V. Kumarpant and S. N. Desai as a person concerned in the above offence attract the operation of Section 7(1)(b) of the Land Customs Act, 1924 and Section 167(8) of the Sea Customs Act, 1878 read with Section 3(2) of Import and Export (Control) Act, 1947.

Now, therefore, S/Shri B. V. Kumarpant and S. N. Desai are hereby called upon to Show Cause to the undersigned why a penalty should not be imposed on them under the above sections and why the goods and the currency mentioned in the Schedule should not be confiscated under Section 5(3) of the Land Customs Act, 1924, and Section 167(8) of the Sea Customs Act, 1878 and the two hand bags under Section 168 of the Sea Customs Act, 1878 read with Section 3(2) of Imports and Exports (Control) Act, 1947, as made applicable to the Land Customs Act, 1924.

The basis for the liability for the goods to confiscation and his liability to penalty are set out in the annexure to the Show Cause Notice.

S/Shri B. V. Kumarpant and S. N. Desai are hereby directed to produce at the time of the showing cause all the evidence or documents upon which he intends to rely in support of their defence. They are further directed to inform whether they desire to be heard in person by the undersigned in the case.

S/Shri B. V. Kumarpant and S. N. Desai should submit their reply to this Show Cause Notice together with all documents and evidence, if any, within one month from the date of publication of this notice, failing which the case will be decided *ex parte* on merit.

#### ANNEXURE

On the night of 8th January 1959 a sitting up party was arranged by the Sub-Inspector of Central Excise, Gotnibag, Majali Range on a vulnerable point. At about 01-00 hrs. The party noticed two persons entering Indian union territory from Goa side, and apprehended them with their belongings for interrogation and examination as they entered by an unauthorised route. Panchas were called and the personal effects and the person of the two were examined and found to contain the goods as shown in the Schedule to the Show Cause Memo. As the goods being of foreign origin and believed to be imported into India unauthorisedly, were seized under a panchanama, and the two persons gave out their names as (1) S/Shri Bhiku Vishnu Kumarpant, (2) Soiru Narayan Desai of Goa.

2. During the course of the further investigations the statements of S/Shri B. V. Kumarpant and S. N. Desai were recorded by the Sub-Inspector of Central Excise, Gotnibag on 9th January 1959.

- (i) In the first instance Shri B. V. Kumarpant deposed that the goods under seizure belonged to one Shri Vasant Desai of Cancona, Goa.
- (ii) Shri Soiru Narayan Desai stated that he accompanied Shri Kumarpant since he purchased the goods from a shop at Cancona (Goa).
- (iii) In his supplementary statement of even dated Shri B. V. Kumarpant claimed that the goods under seizure belonged to him and admitted the offence with which he was charged. Both of them have admitted that they have come from Goa by an unauthorised route with the contraband goods.

3. In view of the above, that the import of the goods under seizure is restricted, and the parties own admission regarding the illicit import of the goods into India by land from Goa, and the circumstantial evidences under which the goods were seized, there is reason to believe that the goods under seizures were imported in contravention of the provisions of the Notifications and Orders as indicated in the accompanying Show Cause Memo.

4. The goods under seizure are therefore liable to be confiscated and S/Shri B. V. Kumarpant and S. N. Desai as persons concerned in the offence are liable to be penalised under the provisions set out in the appended Show Cause Memo.

#### SCHEDULE

S. No.	Description	Quantity
1.	7 O'Clock Blades	5,000 Nos. (Five thousand).
2.	Press Studs	60 Gross.
3.	Hand Bag	2.

[No. VIII(b)10-24/59.]

#### NOTICES

Belgaum, the 16th November 1959

S.O. 2612.—Whereas it appears that the marginally noted goods which were seized by the Superintendent of C.E. Dodamarg, at a place near "Sathaya Maharaj B. Md. Srs. Deval" of Danol village, on 2nd May 1959 were imported by land from Goa (Portuguese possession in India) in contravention of Section 5(1) of the Land Customs Act 1924, and Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55, dated 7th December, 1955 issued under Section 3 of the Imports and Exports Control Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act, 1878.

Betelnuts in  
four gunny-  
bags. 8 00

Now therefore, any person claiming the goods is hereby called upon to show cause to the Assistant Collector of Central Excise and Land Customs Goa Frontier Division, Belgaum why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and the four gunny-bags under Section 168 of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878.

If such a owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10-373/59.]

*Belgaum, the 20th November 1959*

S.O. 2613.—WHEREAS it appears that the marginally noted goods which were seized by the			Sub-Insp. of C.E. Simachi (Chorla Range) at	
S. No.	Description	Qty.	a place known as "HAL" near Mau village in	
1	Woollen black cloth 2 pieces of 3 Yds. each made in Eng-land	6 Yds.	the vicinity of Indo-Goa border on 16-5-59	
2	Green white spot printed Cotton cloth	3 "	were imported by land from Goa (Portuguese	
3	White dolly white ground cotton cloth	3 "	possession in India) in contravention of	
4	White netting embroidered roomal	1 piece	Section 5(1) of the Land Customs Act,	
5	Hanga Scotch Whiskey	1 Btl.	1924 and the Govt. of India, Ministry of	
6	Blue gillete blades	300	Commerce and Industry, Import Control	
7	Red, Gillete blades	100	Order No. 17/55 of 7-12-55 issued under	
8	7 O'Clock blades	200	Section 3 of the Imports and Exports	
9	Capstan cigarettes	380	Control Act, 1947 and further deemed to	
10	Gold Flake cigarettes	190	have been issued under Sec. 19 of the Sea	
11	Fancy earring assorted designs	11 pairs	Customs Act, 1878.	
12	Baring with steel colour balls	5 pieces	Now therefore, any person claiming the goods is hereby called upon to show cause to the Asstt. Collr. of Cen. Ex. & Land Customs, Goa Fr. Div, Belgaum why the above goods should not be confiscated under Section 5 (3) of the Land Customs Act, 1924 read with Sec. 167(8) of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1) (c) of the L.C. Act, 1924 read with Sec. 167 (8) of the Sea Customs Act, 1878.	
13	Same tins	7		
14	Christian Crones	13		
15	Foris Scent Btl.	2 Btls.		
16	Black lion Tobacco	5 Pkts.		
17	Zig-zag cigarette papers	98 pkts		
18	Nita press studs	14 Gross		
19	Dutch cheen	4		
20	Maggie boillon tins each of 100 lbs and one tin prty	4 tins 1		
21	"Banazm" asthemio medicine	2 Btls.		
22	Vaselin Hair tonic made in Eng-land	1 Btl.	If such an owner fails to turn up to claim the abovementioned goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Govt. of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.	
23	Maggie soup powder packets	4 Pkts.		

[No. VIII (b) 10-291/59.]

S.O. 2614.—Whereas it appears that the marginally noted goods which were seized by the Police Head Constable, Belgaum City (B. No. 1149) at a place known as "Arlikatti-Adda", Belgaum on the 23rd May, 1959 were imported by land from Goa (Portuguese Possession in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries, Import Control Order No. 17/55 dt. 7th December 1955 issued under Section 3 of the Imports and Exports Control Act 1947, and further deemed to have been issued under Section 19 of the Sea Customs Act, 1878.

Now therefore, any person claiming the goods is hereby called upon to show cause to the Assistant Collector of Central Excise and Land Customs, Goa Frontier Division, Belgaum why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of

the Sea Customs Act, 1878, and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878.

If such a owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10-353/59.]

**S.O. 2615.**—Whereas it appears that the marginally noted goods which were seized by the Inspector C. E. Sasoli in the jurisdiction of Chowkey No. 41, in the Dodamarg Circle, in the vicinity of the Indo-Goa border on 19th August, 1959 were imported by land from Goa (Portuguese possession in India) in contravention of the Section 5(1) of the Land Customs Act, 1924, and the Government of India, Ministry of Commerce and Industry, Import Control Order No. 17/55 dated the 7th December, 1955, issued under Section 3 of the Imports and Exports Control Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act, 1878.

Now, therefore, any person claiming the goods is hereby called upon to show cause to the Assistant Collector of Central Excise and Land Customs, Goa Frontier Division, Belgaum why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act 1878 and the 24 bags under Section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 and read with Section 167(8) of the Sea Customs Act, 1878.

If such a owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b) 10-510/59.]

**S.O. 2616.**—Whereas it appears that the marginally noted goods which were seized by the Insp. C. E. Sasoli at a place known as "Kambral Sima" in the vicinity of Indo-Goa border on 19th September, 1959, were imported by land from Goa (Portuguese possession in India) in contravention of Section 5(1) of the Land Customs Act 1924 and the Government of India, Ministry of Commerce and Industries, Import Control Order No. 17/55 dated 7th December, 1955, issued under Section 3 of the Imports and Exports Control Act 1947 and further deemed to have been issued under Section 19 of the Sea Customs Act 1878.

Now therefore, any person claiming the goods is hereby called upon to show cause to the Assistant Collector of Central Excise and Land Customs, Goa Frontier Division, Belgaum why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with Section 167(8) of the Sea Customs Act, 1878 and the 15 gunny-bags under Section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878.

If such a owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this Notice in the Government of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10-507/59.]

E. R. SRIKANTIA,

Asstt. Collector.

**CENTRAL EXCISE COLLECTORATE, DELHI****CENTRAL EXCISE***New Delhi, the 19th November 1959*

**S.O. 2617.**—This office Notification No. S.O. 1331, dated the 6th June, 1959, published in Part II Section 3 Sub-section (ii) of the Gazette of India dated the 13th June, 1959 delegating the powers of the Collector under Rule 9 of Central Excise Rules, 1944 to the Superintendents of Central Excise in Delhi Collectorate is hereby cancelled.

2. All entries relating to Rule 9 in the Table appended to this office Notification S.R.O. 1305 published in Part II Section 3 of the Gazette of India, dated the 27th April, 1957, are also hereby deleted.

[C. No. IV(8)1/58/53047.]

B. D. DESHMUKH, Collector.

**MINISTRY OF COMMERCE AND INDUSTRY***New Delhi, the 21st November 1959*

**S.O. 2618.**—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby directs that the following further amendment shall be made in the Textile Commissioner's Organisation, Bombay (Recruitment to Class III Posts) Rules, 1958, published with the notification of the Government of India in the Ministry of Commerce and Industry No. S.O. 12, dated the 3rd January 1959 at pages 7—18 in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 3rd January 1959, namely:—

In the Schedule to the said rules, against the post of Technical Assistant Grade I, for the existing entry in column 9, the following entry shall be substituted, namely:—

“Should possess a Degree or Diploma in Textile Technology. In the latter case candidates should at least be matriculates. They should possess good knowledge of Spinning, Weaving and Costing of Cotton Textiles and should have at least two years experience in Mills.”

[No. 21(48)-Tex.B/57.]

HARGUNDAS, Under Secy.

**CORRIGENDUM***New Delhi, the 24th November, 1959*

**S.O. 2619.**—In the Ministry of Commerce & Industry Order S.O. 2506/IDRA/6/11, dated the 9th November, 1959, published in the Gazette of India Part II—Section 3 sub-section (ii) dated the 14th November, 1959, entry No. 10 relating to Shri R. A. Podar, shall be deleted.

[No. 4(49)IA(II)(G)/59.]

K. C. MADAPPA, Dy. Secy.

**(Indian Standards Institution)***New Delhi, the 17th November 1959*

**S.O. 2620.**—In pursuance of regulation 4 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that amendments to the Indian Standards given in the Schedule hereto annexed have been issued under the powers conferred by sub-regulation (1) of regulation 3 of the said regulations.



## THE SCHEDULE

Sl. No.	No. and title of the Indian Standard amended	No. & date of Gazette Notification in which the establishment of the Indian Standard was notified	No. & date of the Amendment	Brief particulars of the amendment	Date of effect of the Amendment
---------	--	---	-----------------------------	------------------------------------	---------------------------------

1 2 3 4 5 6

- |   |  |                                  |                     |  |                   |
|---|--|----------------------------------|---------------------|--|-------------------|
| 1 | IS:105-1950 Specification for Ready Mixed Paint, Brushing, Priming for Enamels for Use on Metals | S.R.O. 658 dated 26th March 1955 | No. 1 November 1959 | In the title of the specification, the words 'Red Oxide' have been added after the word 'Brushing' and the amended title will be read as follows:<br><b>'SPECIFICATION FOR READY MIXED PAINT, BRUSHING, RED OXIDE, PRIMING, FOR ENAMELS, FOR USE ON METALS'.</b><br>Consequential changes have been made in text also.   | 1st December 1959 |
| 2 | IS:380-1952 Specification for French Chalk, Technical  | S.R.O. 658 dated 26th March 1955 | No. 1 November 1959 | (i) In clause C-5.2 (lines 6-10), the portion 'Filter.. and weight' has been deleted and substituted by the following:<br><b>'Filter through a tared Gooch crucible or sintered glass crucible (G No. 4 or its equivalent) or a filter paper (Whatman No. 42 or its equivalent). Wash thrice with 10-ml portions of carbon tetrachloride collecting the filtrate and washings in a tared china dish. Evaporate the solvent on a steam bath and dry the final residue in an oven maintained at 105° to 110°C to constant weight.'</b> | 1st December 1959 |

1	2	3	4	5	6
					(ii) The existing clause C-5.3 has been deleted and substituted by a new clause.

Copies of these amendment slips are available, free of cost, with the Indian Standards Institution, 'Manak Bhavan', 9 Mathura Road, New Delhi-1, and also at its Branch Offices at (i) 232 Dadabhoy Naoroji Road, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1 and (iii) 2/21 First Line Beach, Madras-1.

[No. MDC/11(9)]

**S.O. 2621.**—In exercise of the powers conferred by sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies the issue of errata slips, particulars of which are given in column (4) of the Schedule hereto annexed, in respect of the Indian Standards specified in column (2) of the said Schedule.

#### THE SCHEDULE

Sl. No.	No. and title of Indian Standard	No. and date of Gazette Notification in which establishment of Indian Standard was notified	Particulars of Errata Slip Issued
1	2	3	4
1	IS:550-1954 Specification for Safes	S.R.O. 658 dated 26th March 1955	Please read '23½' for '24' in the third entry of 'width' against 'Inside dimensions of Safes, subject to a tolerance of $\pm 1$ in.' under 'SINGLE DOOR' in Table II at page 4.

Copies of this errata slip are available free of cost, with the Indian Standards Institution, "Manak Bhavan", 9 Mathura Road, New Delhi -1, and also at its Branch Offices at (i) General Assurance Building, 232 Dr. Dadhabhoy Naoroji Road, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1, and (iii) 2/21 First Line Beach, Madras-1.

[No. MDC/11(10)]

C. N. MODAWAL,  
Deputy Director (Mark).

### MINISTRY OF STEEL, MINES & FUEL

(Department of Iron & Steel)

New Delhi, the 19th November 1958

**S.O. 2622/ESS COMM/IRON AND STEEL-2(c)/(55)A.M.**—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the

Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against 'PUNJAB', the following entries shall be added, namely:—

2	3
“ 10. District Magistrates in the State of Punjab.	10, 11, 12(2), 18, 20, 22, 23, 24, (b, c and d) and 28 (for Iron and Steel and Scrap).
11. Joint Director, Industries, Punjab, Chandigarh.	4, 5, 10, 11, 12 (2), 18, 20, 22, 23, 24, (b, c and d) and 28 (for Iron and Steel and Scrap) ”

[No. SC(A)-1(10/59.)]

New Delhi, the 20th November 1959

**S.O. 2623 ESS.COMM/IRON AND STEEL-2(c)/AM(56).**—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S. R. O. 2041/ESS. COMM./IRON AND STEEL-2(C), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against 'OTHERS', the following entries shall be added, namely:—

2	3
“ 42. Deputy Assistant Quarter Master General, Q.I (A), Q.M.G.'s Branch, Army Headquarters, D.H.Q., P.O., New Delhi.	4 and 5.
43. Staff Officer 2, E3C/2, E-in-C's Branch, Army Headquarters, Kashmir House, New Delhi.	4 and 5.
44. Controller of Stores and Purchase, Hindustan Aircraft Limited, Bangalore.	4 and 5. ”

[No. SC(A)-1(20)/59.]

J. S. BAIJAL, Under Secy.

#### (Department of Mines & Fuel)

New Delhi, the 20th November 1959

**S.O. 2624.**—In exercise of the powers conferred by sub-section (2) of section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952), the Central Government hereby appoints Shri B. K. Ghosh, Deputy Coal Controller (Production), as a member of the Coal Board for a further period till the 31st January, 1960.

2. It is hereby notified for general information that the Coal Board now consists of the following persons who have been appointed by the Central Government as Chairman and members thereof, with effect from the respective dates shown against each, namely:—

	Date of appointment
1. Shri A. Zaman, I.C.S., Coal Controller.	Chairman. 3-1-1959 (A.N.).
2. Shri S. S. Grewal, Chief Inspector of Mines.	Member. 2-4-1954 (reappointed w.e.f. 2-4-1959).
3. Shri B. K. Ghosh, Deputy Coal Controller (Production).	Member. 22-4-1958.
4. Shri S. G. Krishnan, Chief Mining Adviser, Eastern Railway, Dhanbad.	Member. 26-4-1959.
5. Shri S. Mukherjee, Chief Mining Engineer, Coal Board.	Member. 21-12-1957.

[No. C5-1(9)/59.]  
CHHEDI LAL, Dy. Secy.

## (Department of Mines &amp; Fuel)

*New Delhi, the 21st November 1959*

S.O. 2625.—Whereas by the notifications of the Government of India in the Department of Mines and Fuel (Ministry of Steel, Mines and Fuel) S.R.O. 3108, dated the 24th September, 1957 under sub-section (1) of Section (4) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government gave notice of its intention to prospect for coal in the lands in the locality specified in the Schedule appended to that notification;

And whereas by the notification of the Government of India in the Department of Mines and Fuel (Ministry of Steel, Mines and Fuel) S.O. 1866, dated the 19th August, 1959 under Sub-section (1) of Section 7 of the said Act, notice was issued specifying further period of one year commencing from the 24th September, 1959, as the period within which the Central Government may give notice of its intention to acquire the said lands or any rights in or over such lands;

And whereas the Central Government is satisfied that coal is obtainable in the whole or any part of the said lands;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the lands measuring 110.10 acres described in the schedule appended hereto.

The plan of the areas covered by this notification may be inspected in the office of the Deputy Commissioner, Hazaribagh, or in the office of the Coal Controller, I, Council House Street, Calcutta or in the office of the National Coal Development Corporation Ltd. (Revenue Section), Darbhanga House, Ranchi.

Any person interested in the aforesaid land may, within 30 days of the issue of this notification, file objection to the acquisition of the whole or any part of the land or of any rights in or over such lands to the Coal Controller, I, Council House Street, Calcutta.

## SCHEDULE

Plan No. Rev/43/59  
(Showing lands to be  
acquired).

## "DHORI BLOCK"

S.L. No.	Village	Thana	Thana No.	District	Area	Remarks
1.	Dhori	Nawadih	68	Hazaribagh	110.10 Acres	Part

TOTAL AREA: 110.10 Acres (Approximately).

Plot Nos. to be acquired in village Dhori:—

353 (Part), 940 (Part), 1281 to 1287, 1300, 1302 to 1318, 1320, 1321, 1349 (Part), 1390.

*Boundary description*

AB line passes along the southern boundary of Kargal Colliery.

BC line passes through plot Nos. 353 and 940.

CD line passes along the boundary of plot Nos. 1340, 1339, 1338, 1337, 1335, 1334, 1322, 1323, 1324, 1301, 1297, 1299, 1289, 1288, 1291; 1292; 1293 and 940.

DE line passes along right bank of river Damodar.

EF line passes through river Damodar.

FG line passes along the central line of river Damodar.

GF line passes through river Damodar.

HI line passes through plot No. 1349, and along plot Nos. 1319 and 940.

IA line passes through plot Nos. 940 and 353 and upto the Southern boundary of Kargal Colliery starting point (A).

[No. C2-20(5)/59.]

B. ROY, Under Secy.

**MINISTRY OF FOOD AND AGRICULTURE**

**(Department of Agriculture)**

*New Delhi, the 19th November 1959*

**THE ANDAMANS FOREST DEPARTMENT (CLASS III AND CLASS IV POSTS) RECRUITMENT RULES, 1959.**

**S.O. 2626.**—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following Rules regulating method of recruitment to Class III and Class IV posts of the General Central Service in the Andamans Forest Department, namely:—

**1. Short title and commencement.**—(1) These rules may be called the Andamans Forest Department (Class III and Class IV posts) Recruitment Rules, 1959.

(2) They shall come into force at once.

**2. Classification and scales of pay.**—The classification of the said posts and the scales of pay attached to them shall be as specified in columns 3 and 4 of the Schedule to these rules.

**3. Method of recruitment, age limit and other qualifications.**—The method of recruitment to such posts, the age limit and other qualifications for recruitment and other matters connected therewith shall be as specified in Columns 5 to 14 of the said Schedule annexed hereto.

## Recruitment Rules—Andamans Forest Department—

Sl. No.	Name of the post	Its classification whether gazetted/Non-gazetted & Ministerial or/Non-Ministerial	Scale of pay	No. of Post	Percentage of post to be filled by		
					Direct	Promotion	
						By selection	Seniority cum fitness
1	2	3	4	5	6	7	8
1.	Office Superintendent.	General Central Service Class III Non-Gazetted Ministerial.	250—15—400.	One	..	..	100% ..
2.	Head Clerks. .	Do.	160—10—250	Two	..	..	Do. ..
3.	Higher Grade Clerks.	Do.	80—5—120 —8—200— 10/2—220.	5 Six-teen	33½%	..	66½% ..
4.	Lower Division Clerks.	Do.	60—3—81— EB—4— 125—5—130.	3 35	100%	..	.. ..
5.	Daftries .	Non-Gazetted Class IV.	35—1—50	Three	..	..	100% ..
6.	Peons . .	Do.	30—½—35	28	100%	..	.. ..

## Notes.

1. Probation period of one year will be applicable only for appointments to permanent posts.
2. The age limit prescribed for direct recruitment shall be relaxable in the case of candidates belonging to special categories to the extent specified by the Government of India from time to time.
3. Appointments made otherwise than by promotion shall be subject to the orders regarding seniority.
4. Qualifications are relaxable in the case of persons who are recruited in the Andamans.
5. Appointing authority may relax educational qualifications in the case of persons who are recruited in the Andamans.
6. No person having more than one wife living or being married person who has already been married after being satisfied that there are special grounds for doing so, may exempt any such person from the provisions of this rule.

*Class III (Ministerial) and Class IV Posts*

For direct recruitment		Period of probation	For promotion/Transfer only	
Age limit	Educational and other qualifications required		Whether age and Educational qualification prescribed for direct recruitment will apply in case of appointment by promotion/Transfer	Grades services from which promotions/Transfers are to be made
10	11	12	13	14
..	..	..	Will not apply in the case of permanent/Quasi-permanent persons in the lower Grade.	Promotion is to be made from amongst Head Clerks.
..	..	..	Do.	Promotion is to be made amongst Higher Grade Clerks
..	Graduate preferably with experience of not less than 2 years in Government Office.	One year in the case of direct recruit.	qualifications will not apply in case of persons who are permanent or quasi-permanent in grade from which promotion is permissible. For temporary people Graduate preferably with experience of not less than 2 years.	Promotion is to be made from Lower Division Clerks in the order of permanent/quasi-permanent educationally qualified temporary persons.
Below 25 years.	Matriculation with a speed of not less than 30 words per minute in typewriting.	One year.	..	Suitable Clerk will be appointed as Stenotypist.
..	..	..	Do.	Promotion from peons.
Below 25 years.	Middle School Standard Pass.	One year.	..	..

dates belonging to Scheduled Castes/Tribes, displaced Government Servants and other time.

communal representation issued by the Government of India from time to time.

Forest Department before the enforcement of the recruitment rules.

otherwise in possession of sufficient experience in the line.

a wife living shall be eligible for appointment provided the Government of India candidate from the operation of this condition.

Sl. No.	Name of the post	Its classification whether gazetted, non-gazetted & Ministerial or Non-Ministerial	Scale of Pay	No. of post	Percentage of post to be filled by		
					Direct	Promotion	
						By selection	Seniority cum fitness

1	2	3	4	5	6	7	8	9
1	Electrical Engineer.	General Central Service Class III Non-gazetted Non-Ministerial	Rs. 250—10— 400.	One	100%	..	..	..
2	Electrical Foreman.	Do.	100—5—125 6—155— EB—6— 185.	One	..	..	100%	..
3	Superintendent Timber treatment plant and seasoning Kiln.	Non-Ministerial	250—15— 400.	One	100%	..	..	..
4	Tractor Engineer	Do.	Do.	One	100%	..	..	..
5	Assistant Construction Engineer.	Do.	200—10— 300.	One	100%	..	..	..
6	Mechanical Extraction Charge Hand.	Do.	100—5—125— 6—155— EB—6— 185.	Two	100%	..	..	..
7	Mechanical Foreman.	Do.	Do.	One	..	..	100%	..



	For direct recruitment		Period of probation	For promotion/Transfer only	
Age limit	Educational and other qualification required.			Whether age and Educational qualification prescribed for direct recruitment will apply in case of appointment by promotion/Transfer	Grades service from which promotions/Transfers are to be made
	Essential	Desirable			
	(a)	(b)			
10	11		12	13	14
Below 25 Years.	A Degree or Diploma in Electrical Engineering.	..	One year.	No.	..
..	..	..	..	Do.	Promotion from Fitters.
Below 25 Years	M. Sc. in Chemistry or Graduate in Chemical Engineering.	..	Do.	Do.	..
Do.	Intermediate Science/Higher Secondary. <i>Experience</i> : High theoretical background with 2 years' practical experience of running, repairing, overhauling and maintenance of Caterpillar, Tractors and Diesel Engine.	..	Do.	Do.	..
Do.	Intermediate Science. <i>Experience</i> : 1. Practical Experience of workshops and practice of carpentry. 2. Experience of lining up shifting and laying out machinery.	..	One year	Do.	..
Do.	Matriculation or Equivalent examination. <i>Experience</i> : Practical knowledge of maintenance of tractors.	..	One year	Do.	..
..	..	..	..	Do.	Promotion from Fitters.

1	2	3	4	5	6	7	8	9
8	Surveyor and draftsman.	General Service Class III Non-gazetted Non-Ministerial	Central Class III	100—5—125— 6—155—EB— 6—185.	One	100%	..	..
9	Mechanical Foreman.	Do.	Do.	One	..	..	Promotion 100%	..
10	Head Moulder.	Do.	Do.	One	..	..	Do.	..
11	Wood Workshop Foreman.	Do.	Do.	100—5—125— 6—155— EB—6— 185	One	..	..	Do.
12	Head Boat Builder.	Do.	Do.	90—5—120	One	..	..	Do.
13	Head Sawyers.	Do.	Do.	160—10— 250.	One	..	..	Do.
14	Sawyers.	Do.	Do.	75—3—105	Three	100%	..	..
15	Saw Filer.	Do.	Do.	150—7—185— 8—225.	One	..	..	Do.
16	Mill Gunner.	Do.	Do.	100—5—125— 6—155— EB—6— 185.	One	..	..	Do.
17	Assistant Gunner.	Mill Non-Ministerial.	Do.	75—3—105	Six	..	..	100%
18	Assistant Filer.	Saw	Do.	100—5—125— 6—155— EB—6— 185.	Two	100%	..	..

10	11(a)	11(b)	12	13	14
Below 25 years.	Matriculation and Passed Surveyor's examination with Diploma in Draftsmanship from any recognised Institute.	..	One year	No.	..
..	..	..	..	Do.	Promotion from Fitters.
..	..	..	..	Do.	Promotion from Welders.
..	..	..	..	Do.	Promotion from Carpenters.
Below 25 years.	Middle School Standard Pass: Experience : At least one year's experience as a Boat Builder.	..	One year	Do.	Promotion from Carpenter, failing which by direct recruitment.
..	..	..	..	Do.	Promotion from Sawyers.
Below 25 years.	Middle School Standard Pass. Experience : 5 years experience in sawing.	..	One year	Do.	..
..	..	..	..	Do.	Promotion from Assistant Filers.
..	..	..	..	Do.	Promotion from Assistant Gunners.
Below 25 years.	Middle School Standard Pass. Experience: Experience as a Mill Gunner or in a similar capacity for not less than 2 years.	..	One year	No.	Promotion from Graders failing which by direct recruitment.
Do.	Matriculation or Equivalent Examination. Experience: Experience in the line for at least two years.	..	One year	Do.	..

1	2	3	4	5	6	7	8	9
19	Yard Foreman.	Non-Ministrial	100-5-125- 6-155- EB-6- 185.	One	..	..	100%	..
20	Assistant Yard Foreman.	Do.	55-5-85- EB-4- 125-5- 130.	One	..	..	100%	..
21	Store Keeper.	General Central Service Class III Non-Gazetted Non-Ministrial.	80-5-120- 8-200- 10-200	One	..	..	Do.	..
22	Assistant Store Keeper.	Do.	60-3-81- EB-4- 125-5- 130.	One	100%	..	..	..
23	Special Grade Munshi.	Do.	75-3-105	Three	..	..	100%	..
24	Munshi Grade. 'A'	Do.	60-5/2-75	24	..	..	Do.	..
25	Munshi Grade. 'B'	Non-Gazetted Class IV.	40-2-60	30	100%	..	..	..
26	L.C.T. Engineer.	General Central Service Class III Non-gazetted Non-Ministrial.	250-15- 400	Two	..	..	100%	..
27	Master.	Do.	100-5-125- 6-155- EB-6- 185.	Four	..	..	Do.	..
28	Chief Driver.	Do.	100-10- 180.	One	..	..	Do.	..
29	Serang.	Do.	75-3-105	Five	..	..	Do.	..
30	Driver Grade I	Do. <sup>1</sup>	Do.,	Seven	..	..	Do.	..

10	11(a)	11(b)	12	13	14
Below 25 years	Matriculation or Equivalent Examination. <i>Experience</i> : Two years experience in sawing.	..	One year	No.	Promotion from Assistant Yard Foreman or falling which by direct recruitment.
Do.	Middle School Standard Pass. <i>Experience</i> : Two years experience in Timber Yards.	..	Probation one year.	Do.	Promotion from 'B' Grade Munshies, failing which by direct recruitment.
..	..	..	..	Do.	Promotion from Assistant Store Keeper/ L.D.C.
Below 25 years	Matriculation Examination At least 2 years experience of Store Keeping.	..	One year	Do.	..
..	..	..	..	Do.	Promotion from 'A' Grade Munshi.
..	..	..	..	Do.	Promotion from 'B' Grade Munshi.
Below 25 years	Middle School Standard Pass. Preference will be given to Matriculates.	..	One year	Do.	..
Do.	Second Class Certificate in driving of Diesel Engine Crafts or its equivalent.	..	Probation One year.	Do.	Promotion from suitable personnel available in the Department such as Master etc. failing which by direct recruitment.
..	..	..	..	Do.	Promotion from Serangs who holds Master Certificate.
..	..	..	..	Do.	Promotion from Drivers who holds first class Drivers Certificate.
..	..	..	..	Do.	Promotion from literates who hold Serang's certificate.
..	..	..	..	Do.	Promotion from Grade II Drivers.

1	2	3	4	5	6	7	8	9
31	Driver Grade II	General central service class III Non-gazetted Non-Ministerial	60—5/2—75	Nine	100%	..	..	..
32	Stoker Tindal.	Do.	Do.	Four	100%	..	..	..
33	Seacimnies.	Non-Gazetted Class IV.	40—2—60	26	100%	..	..	..
34	Rangers.	General Central Service Class III Non-Gazetted Non-Ministerial.	160—10—300	13	66½%	..	33½%	..
35	Deputy Ranger.	Do.	80—5—120—8—160.	26	..	..	100%	..
36	Foresters.	Non-Gazetted Class IV.	40—2—60	36	66½%	..	33½%	..
37	Forest Guards .	Non-Gazetted Class IV	35—1—50	41	100%	..	..	..
38	First Aid Com-pounder.	Do.	40—1—50—2—60	One	100%	..	..	..
39	Head Veterinary Compounder.	Non-Ministerial Non-Gazetted.	55—3—85—EB—4—105	One	100%	..	..	..
40	Veterinary Com-pounder.	Non-Gazetted Class IV	40—1—50—2—60	Ten	100%	..	..	..

## NOTE :—

1. Probation period of one year will be applicable only for appointments to permanent posts.
2. The age limit prescribed for direct recruitment shall be relaxable in the case of candidates belonging to Special Categories to the extent specified by the Government of India from time to time.
3. Appointments made otherwise than by promotion shall be subject to the orders regarding promotion.
4. Qualifications are relaxable in the case of persons who are recruited in the Andaman Islands.
5. Appointing authority may relax educational qualifications in the case of persons who are recruited from the Andaman Islands.
6. No person having more than one wife living or having married a person who has already been married, after being satisfied that there are special grounds for doing so, may exempt any such person from the provisions of the Act.

10	11(a)	11(b)	12	13	14
Below 25 years	1. License in driving Heavy Vehicles. 2. Working knowledge of English or Hindi.	..	One year	..	..
Do.	About two years experience in the line.	..	Do.	..	..
Do.	1. Middle School Standard Pass. 2. Adequate knowledge of Steering.	..	Do.	..	..
Do.	Intermediate Science/Higher Secondary and a pass from the Ranger Course from Dehra-Dun or Coimbatore.	..	Do.	No.	Promotion from Deputy Rangers failing which by direct recruitment.
..	..	..	..	Do.	Promotion from amongst Matriculate foresters.
Below 25 years.	Middle School Standard Pass.	..	Do.	Do.	Promotion from Forest Guards failing which by direct recruitment.
Do.	Middle School Standard Pass	..	One year	..	..
Do.	1. Middle School Standard Pass. 2. A compounder's Certificate from a Recognised Institution.	..	Do.	..	..
Do.	Matriculation Examination Passed. Veterinary Certificate from any recognised Institute.	..	Do.	..	..
Do.	Veterinary Compounder Course Pass from a recognised Institution.	..	Do.	..	..

and not for temporary posts, dates belonging to Scheduled Castes/Tribes, Displaced Government Servants and Other time.

ing communal representation issued by the Government of India from time to time.

Forest Department before the enforcement of the recruitment rules.

otherwise in possession of sufficient experience in the line.

a wife living shall be eligible for appointment provided the Government of India candidate from the operation of this condition.

[No. F. 6-15/58-F. II.]

N. RANGANATHAN, Under Secy.

## (Department of Agriculture)

*New Delhi, the 23rd November 1959*

**S.O. 2627.**—In exercise of the powers conferred by Section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (I of 1937), the Central Government hereby makes the following further amendments in the Creamery Butter Grading and Marking Rules, 1941, the same having been previously published as required by the said section, namely:—

In the said rules for rule 6, the following rule shall be substituted:—

- "6. Marking Provisions.**—(1) The grade designation mark shall be securely affixed to or printed on each tin, carton or packet of butter. In the case, however, of firms using automatic filling and packing machinery, if the Agricultural Marketing Advisor to the Government of India is satisfied regarding the *bonafides* of the party as well as the quality of butter produced, he may permit the party to print prominently every package of butter produced by him with the number of Certificate of Authorisation issued to him under the General Grading and Marking Rules, 1937, the word 'Agmark' and the grade of the butter, in the manner prescribed by him. No label as given in Schedule II shall in such cases be necessary to be affixed on the package and the butter shall be deemed to have been properly graded.
- (2) In addition to the above the following particulars shall also be clearly and indelibly marked on each container:
- (a) date of packing in code or plain letters,
  - (b) place of packing,
  - (c) serial number of the churning,
  - (d) net weight of butter contained at the time of packing."

[No. F. 3-1/59-A.M.]

V. S. NIGAM, Under Secy.

**MINISTRY OF HEALTH***New Delhi, the 16th November 1959*

**S.O. 2628.**—In exercise of the powers conferred by section 10 of the Pharmacy Act, 1948 (8 of 1948), the Pharmacy Council of India, with the approval of the Central Government, hereby makes the following amendments in the Education Regulations published with the Ministry of Health No. S.R.O. 1404 dated the 11th July, 1953, in Part II, section 3 of the Gazette of India No. 29, dated the 18th July, 1953, namely:—

In the said Regulations:—

1. After the heading "APPENDIX A", at page 1105 of the Gazette of India aforesaid, the following paragraph shall be inserted, namely:—

"(The books indicating the general scope of syllabus and the reference books recommended refer to the latest editions that are available in the market. Any reference given to the year of publication shall be deemed to be cancelled)."

2. In "APPENDIX A", under the heading "Reference Books", at page 1115 of the Gazette of India aforesaid, for the entry "4. Garrat—Drugs and Galenicals" the following shall be substituted, namely:—

"4. D. C. Garrat.—The Quantitative Analysis of Drugs."

3. Under the heading "APPENDIX B", for the para reading "N.B.—In science colleges, except for pharmacognosy laboratory, all other laboratories and rooms may be shared with other departments, if available and adequate", at page 1117 of the Gazette of India aforesaid, the following shall be substituted, namely:—

"N.B.—In Science colleges, except for the Pharmacy laboratory, all other laboratories and rooms may be shared with other departments, if available and adequate."



4. Under the heading "List A (Compulsory for all Institutions)", at page 1118 of the Gazette of India aforesaid, for the entry "2 Catchet filling machine" the following shall be substituted, namely:—

"capsule filling machine."

5. Under the heading "List B", at page 1118 of the Gazette of India aforesaid, the entry "2 Cachet filling machine", shall be inserted after the entry "1 Microscope".

6. Under the heading "APPENDIX D", at page 1119 of the Gazette of India aforesaid, for paragraphs 1, 2 and 3, the following shall be substituted, namely:—

- "1. The Examining Authority shall be either a statutory Indian University or a body constituted by the Central or State Government. It shall see that all ordinary rules of discipline and decorum of examinations are strictly observed at the examination centres.
2. It shall permit the Inspector or Inspectors of the Pharmacy Council to visit and inspect the examinations.
3. It shall provide:—
  - (a) adequate rooms with necessary furniture for holding written examinations.
  - (b) well-equipped laboratories for holding practical examinations;
  - (c) an adequate number of qualified and responsible examiners and staff to conduct and invigilate the examinations, and
  - (d) such other facilities as may be necessary for efficient and proper conduct of examinations.

P. S. RAMACHANDRAN, Secy.  
Pharmacy Council of India.

[No. F. 7-110/58-D.]

D. J. BALARAJ, Dy. Secy.

*New Delhi-2, the 17th November 1959*

**S.O. 2629.**—In exercise of the powers conferred by clause (6) of rule 2 of the Indian Port Health Rules, 1955, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Health published as S.R.O. 588 dated the 28th February, 1956, namely:—

the said notification under the heading "Continent of Africa" the name 'C da' shall be omitted.

[No. F. 15-5/59-IH.]

T. V. ANANTANARAYANAN, Under Secy.

## MINISTRY OF TRANSPORT & COMMUNICATIONS

(Department of Transport)

(Transport Wing)

*New Delhi, the 19th November 1959*

### PORTS

**S.O. 2630.**—In exercise of the powers conferred by sub-section (3) of section 3 of the Indian Ports Act, 1908 (XV of 1908), the Central Government is pleased to authorise Shri C. A. Ramaseshan, Pilot, Kandla Port, to pilot in and out of the Port of Kandla, move in the harbour and to berth and unberth ships of any tonnage or type inclusive of tankers and vessels loaded with explosives during day light hours only.

[No. 2-PE(84)/59.]

Miss I. INDIRA, Under Secy.

## (Department of Transport)

## (Transport Wing)

New Delhi, the 20th November 1959

## LIGHT HOUSES AND LIGHT SHIPS

**S.O. 2631.**—In pursuance of sub-section (1) of section 4 of the Indian Light house Act, 1927 (17 of 1927), the Central Government is pleased to appoint the Central Advisory Committee for Lighthouses for a period of two years from date of this Notification, consisting of the following persons, namely:—

*Chairman*

Secretary to the Government of India, Department of Transport, Ministry of Transport & Communications (*ex-officio*) or an officer deputed by him to act as Chairman on his behalf.

*Members*

1. Director General of Shipping, Bombay (*ex-officio*);
2. Nautical Adviser to the Government of India (*ex-officio*);
3. Financial Adviser (Transport & Communications) or his representative (*ex-officio*);
4. Chief Hydrographer, Indian Navy (*ex-officio*);
5. Deputy Secretary in charge of the Department of Lighthouses and Lightships, Ministry of Transport and Communications, Department of Transport (*ex-officio*);
6. Shri C. Sankunni, State Port Officer, Madras;
7. Shri G. T. Kamdar, c/o Bharat Lines Ltd., 104, Apollo Street, Fort, Bombay;
8. Shri J. R. Galloway, c/o Messrs. Gordon Woodroffe & Co. (Madras) Ltd., Madras;
9. Shri T. M. Gokuldas, c/o The Scindia Steam Navigation Co. Ltd., Ballard Estate, Fort, Bombay;
10. Shri Bijoy Prasad Singh Roy, c/o The India Steamship Co., Ltd., 21 Old Court House Street, Calcutta;
11. Shri S. N. Surve, President, Countrycraft Owners' Association, Ratnagiri; and
12. Director General of Lighthouses and Lightships (*ex-officio*)—Member-Secretary.

[No. 4-M.L(1)/59.]

S. K. GHOSH, Dy. Secy.

## MINISTRY OF IRRIGATION &amp; POWER

New Delhi, the 18th November 1959

**S.O. 2632.**—In exercise of the powers conferred by clauses (c), (d) and (f) of sub-section (2) of section 36A of the Indian Electricity Act, 1910 (9 of 1910) and in supersession of Ministry of Irrigation and Power Notification No. EL-II-357(3)/56, dated the 26th December, 1956 and Notification No. EL-III-357(5)/57, dated the 17th September, 1957, the Central Government hereby nominates the

following members to represent the Union territories and the Federation of Electricity Undertakings of India as noted against each on the Central Electricity Board, namely:—

- |  |   |
|--|---|
| 1. Shri T. N. Idnani General<br>Manager, Delhi Electric<br>Supply Undertaking, New<br>Delhi.                                     | Delhi.  |
| 2. Shri K. P. S. Nair, Member,<br>Central Water & Power<br>Commission, New Delhi.  | Himachal Pradesh.   |
| 3. Shri S. S. Kumar, Member,<br>Central Water & Power<br>Commission, New Delhi.  | Manipur, Tripura and the<br>Andaman<br>and Nicobar Islands. |
| 4. Shri R. P. Aiyer, Secretary,<br>Federation of Electricity<br>Undertakings of India,<br>Killick House, Home<br>Street, Bombay. | Federation of Electricity Undertak-<br>ings of India.       |

[No. EL-II-4(4)/59.]

*New Delhi, the 23rd November, 1959*

**S.O. 2633.**—In exercise of the powers conferred by sub-rule (1) of rule 133 of the Indian Electricity Rules, 1956, the Central Government hereby directs that the provisions of rule 43(1) of the said Rules shall be relaxed in the case of electrical installations in Sri Aurobindo Ashram in the State Pondicherry to the extent that fire buckets filled with sand may not be provided in the generating stations owned by the aforesaid Ashram, but in lieu thereof additional chemical fire extinguishers suitable for dealing with non-electrical fires shall be provided

[No. EL-III-3(31)/59.]

N. S. VASANT, Officer on Special Duty.

### MINISTRY OF REHABILITATION

*New Delhi, the 14th November 1959*

**S.O. 2634.**—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties in the Union territory of Delhi specified in the Schedule below for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the said evacuee properties.

#### THE SCHEDULE

*List of urban areas of village "Okhla" for acquisition U/S 12*

Sl. No.	Particulars of Khewat No.	Property Khasra No.	Area Big.	Bis.	Name of the evacuee with the rights in property.
1	19/59 . . .	61/2 . . .	1	0	Farhatula Khan s/o Amir Ullah Khan (Evacuee) (Ownership rights).
2	19/66 . . .	154/1 . . .	6	3	Abdul Jawar s/o Abdul Gani (Evacuee) (Ownership rights).

*List of urban area of village "Karkardooma" for acquisition U/S 12.*

Sl. No.	Particulars of Khewat No.	Property Khasra No.	Area Big. Bis.		Name of the evacuee with the rights in property.	Remarks
1	194/423	1842/67/I	1	11	Sarfraz Ali s/o Sardar Ali	Share 4
		1846/1510/I			Wali Mohd. s/o Mohd.	Share 4
		1511/68/I	1	11	Umar (evacuees)	
		1849/69/I			8	Nisar Ahmed s/o Sitar Ali (non-evacuee)
			3	10		

[No. F.1(1218)-58/Comp.III/Prop.I]

M. L. PURI.  
Settlement Commissioner & *Ex-Officio* Under Secretary.

New Delhi, the 28th November 1959

S.O. 2635.—In exercise of the powers conferred by Sub-Section (1) of Section 6 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950), the Central Government hereby appoints for the State of Punjab, the Deputy Commissioners of the undermentioned districts as *ex-officio* Deputy Custodians of Evacuee Property for the purpose of discharging the duties assigned to the Custodian of Evacuee Property in respect of evacuee Waqf properties under the said Act:—

**DISTRICTS**

1. Gurdaspur & Kangra.
2. Amritsar.
3. Jullundur and Kapurthala.
4. Hoshiarpur.
5. Ludhiana.
6. Ambala & Simla.
7. Karnal.
8. Rohtak.
9. Hissar.
10. Gurgaon.
11. Mohindergarh (Narnaul).
12. Sangrur.
13. Patiala.
14. Faridkot.
15. Ferozepore.

2. The Deputy Commissioners of the aforesaid districts will function as *ex-officio* Deputy Custodians until such time as a Waqf Board is set up by the Punjab Government and the management of Waqf properties is transferred to the Waqf Board.

[No. 2(57)/58-Prop.]

L. J. JOHNSON,  
Chief Settlement Commissioner & Jt. Secy.

**MINISTRY OF LABOUR AND EMPLOYMENT***New Delhi, the 18th November 1959*

**S.O. 2636.**—Whereas immediately before the Employees' Provident Funds Act, 1952 (19 of 1952), became applicable with effect from the 1st November, 1952 to two factories of Messrs Sankey Electrical Stampings Private Limited situated at (i) 124, Carrie Road, Shalimar, Howrah, Calcutta. and (ii) Agra Road, Bhandup, Bombay-40, there was in existence a provident fund common to the employees employed in the factories to which the said Act applies and the employees in their three other establishments specified in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby directs that the provisions of that Act shall also apply to the said establishments.

**SCHEDULE**

1. Messrs Sankey Electrical Stampings Private Limited, Administrative Office, Wakefield House, Sprott Road, Ballard Estate, Bombay-1.
2. Messrs Sankey Electrical Stampings Private Limited, Administrative and Commercial Office, Mookherjee House, 17, Brabourne Road, Calcutta.
3. Messrs Sankey Electrical Stampings Private Limited, Branch Office, 27, Sunder Nagar, New Delhi.

[No. PF. II. 7(43)/59.]

*New Delhi, the 21st November 1959*

**S.O. 2637.**—Whereas immediately before the Employees' Provident Funds Act, 1952 (19 of 1952), became applicable with effect from the 1st October, 1956, to the factory known as Messrs. Dhootapapeshwar Industries Limited, Panvil, District Kolaba, Bombay-4, there was in existence a provident fund common to the employees employed in the factory to which the said Act applies, and the employees in their registered office situated at Dhootapapeshwar Prasad, Girgaum, Bombay-4;

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby directs that the provisions of that Act shall also apply to the said Registered Office.

[No. PF.II.-7(19)/59.]

V. R. ANTANI, Dy. Secy.

*New Delhi, the 19th October 1959*

**S.O. 2638.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Katras Choitodih Colliery and their workmen represented by the Colliery Mazdoor Sangh.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,  
DHANBAD.**

REFERENCE No. 24 of 1959.

**PARTIES:**

Employers in relation to Katras Choitodih Colliery

**AND**

Their workmen.

*Dhanbad, the 11th November 1959***PRESENT:** Shri Salim M. Merchant, B.A.L.L.B., Presiding Officer.**APPEARANCES:**

Shri Kanti Mehta, General Secretary, Indian National Mine Workers Federation, with Shri B. N. Sharma, Member, Executive Committee, and Shri S. Das Gupta, Secretary, Colliery Mazdoor Sangh, for the workmen.

Shri M. S. Bala, An Officer of the Company with Shri P. K. Mitter, Chief Personnel Officer, for the Employers.

**STATE:** BIHAR.**INDUSTRY:** COAL.

## AWARD

1. The Government of India, Ministry of Labour and Employment by Order No. LRIL/1(7)/59 dated 21st April, 1959, made in exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act 1947, (XIV of 1947), was pleased to refer this dispute to me for adjudication. The subject matter of the dispute as stated in the joint application of the parties dated 23rd February, 1959, to Government for application under Section 10(2) of the Act, is as follows:—

“Whether, in terms of the Labour Appellate Tribunal (Colliery Disputes) Decision dated 29th January, 1957, in the event of a piece-rated trammer not earning at least Rs. 1-5-0 per day, he is entitled to the minimum guaranteed daily wages of Category IV prescribed for time rated trammer or 75 per cent. of the rate fixed for piece-rated trammers.”

2. This reference involves the question of the minimum wage which a piece rated trammer is entitled to under the award of the All India Industrial Tribunal (Colliery Disputes) (hereinafter referred to as the Majumdar Award) as modified by the decision of the Labour Appellate Tribunal of India dated 29th January, 1957. The question thus is really one for interpretation of the directions relating to the minimum wage for a piece rated trammer contained in the Majumdar Award as modified by the decision of the Labour Appellate Tribunal.

3. Before dealing with the contentions of the parties it is necessary to state that trammers or trolley men push or control the travel of empty and full tubs. They work both underground and on the surface and are both piece rated and time rated and when piece rated are paid at rates according to the terms of contract between them and the management. As observed by the Conciliation Board Award of 1947 the trammers, along with the pick miners and wagon loaders, perform work of a strenuous nature and often have to work under trying conditions.

4. The Majumdar Tribunal awarded time rated trammers the basic wage, dearness allowance, and other emoluments as fixed for Category III workmen (See para 571 of the Award). For piece rated trammers, “in view of the element of uncertainty in the earnings of piece rated trammer and the existing differentials between a piece rated trammer and time rated trammer”, it directed that piece rated trammer may be given Re. 0-1-0 extra in his basic wage with consequential allowances (para 598).

5. It is necessary to state that neither the Majumdar Tribunal nor the Labour Appellate Tribunal has standardised the duties of trammers. It was conceded by the representatives of both the employers and the workmen that as working conditions differ from mine to mine and even in sections of the same mine, it was not possible either to standardise the duties of a trammer or fix any uniform work load for the piece rated trammer, which could be made generally applicable. For the other two main category of piece rated workers namely the pick miner and the wagon loader the award has fixed workloads to which the wages awarded to them have been linked. The Labour Appellate Tribunal has dealt with the question of trammers at paragraphs 143 to 153 of its decision. Considering the arduous nature of the work of a trammer, the Labour Appellate Tribunal placed the time rated trammer in Category IV, for which it fixed the basic wage of Rs. 1-4-0 per day (See para 151). With regard to the piece rated trammer the Labour Appellate Tribunal directed that whether working underground or on the surface, his existing piece rate should be so adjusted as to enable him to earn the wages of a Category V workmen, one category higher than the time rated trammer, for which it fixed a basic wage of Rs. 1-5-0 per day and in para 152 of its decision the Tribunal directed as follows:—

“We further direct that in no event shall a piece rated trammer get for a day's work wages less than that fixed by us for the time rated trammer.”

6. Before the Majumdar Tribunal the workmen had made a demand for a minimum guaranteed wage for all piece rated workers. With regard to the trammers the argument of the union was that there is such variation in the earnings of piece rated trammer that a certain amount of uniformity can be introduced only by means of a guaranteed wage. The observations and directions of

the Majumdar Tribunal on the minimum guaranteed wage are contained in para 765 of its award which is as follows:—

"765. We do not propose to direct that the moment the worker goes underground he should be entitled automatically to 75 per cent of the total emoluments, nor are we prepared to say that the mere fact of attendance should entitle him to that amount. Piece-rated work itself in a sense guarantees the wages, and we certainly expect workmen over a period of time to reach the workloads that we have fixed for them, though on any particular day they may not be in a position to reach them. To illustrate by means of a concrete example, we have fixed the wages for the pick miner in relation to one tub of 36 C. ft. Over a period of 13 working days he must be in a position to cut and load 13 tubs. If at the end of 13 working days it is found that he has not been able to cut and load 9-3/4 tubs, which is 75 per cent of the workload over a period of 13 working days, that certainly is a matter for investigation by the management. The workloads have been fixed in such a way that in the majority of cases it should be possible for the pick miner to each 9-3/4 tubs, in which case he would have earned 75 per cent of the total emoluments on the score of his work. But if, on the other hand, for no fault of his he has not been able to cut and load 9-3/4 tubs, the management would have to review the situation and take appropriate steps. This is how we understand the demand and we do not think that there is anything unreasonable about it. The Consideration would apply with greater force to the collieries where the workings are specially difficult. We must also see that differences on this score are not like to arise so often as to lead to unnecessary disputes between the workmen and the management. It is only to prevent these that we are directing that the earnings of the piece-rated workers should be reviewed at the end of every 13 working days and if on account of the factors to which the piece-rated workers are not responsible they cannot reach their outputs as fixed by us the management should make up the deficiency to the extent of 75 per cent of the total emoluments that they would have earned under normal conditions after setting off towards the same any 'lay off' compensation that may have been paid under Section 25C of the Industrial Disputes Act, 1947. This would also give an opportunity to the management to rectify the defects in supervision and would also give them an opportunity to weed out the good workers from the bad. The arrangement that we have proposed should not create any difficulty, as the management bear the pay-master would always have the deciding voice in these matters. We are satisfied that the minimum guarantee should also solve the difficulties that have been placed before us regarding the provision for "stacking."

7. By para 766 the Tribunal directed:

"The above shall also apply to trammers and other piece rated workers."

8. In appeal, the Labour Appellate Tribunal by para 195 of its decision reduced the period of adjustment of 13 working days prescribed by the Majumdar Award to 6 working days as it was of the opinion that it was reasonable that the period of adjustment should correspond with the wage period of the workers, which is a week of 6 working days.

9. It appears that the Katras Choitodih colliery which belongs to the Barrack Coal Co. Ltd. of which Messrs. Bird & Co. (P) Ltd. are the Managing Agents, the piece rated trammers, in the event of a break-down, are paid their minimum guaranteed wage of 75 per cent. whilst the union claims that under para 1 of the Labour Appellate Tribunal's decision they are entitled to the minimum wage prescribed for a time rated trammer i.e. the minimum wage of Rs. 1-4 per day.

10. In support of this contention, Shri Kanti Mehta has largely relied upon the language of para 152 of the Labour Appellate Tribunal's decision particular on the words, "in no event" occurring therein, and has argued that as in the event of a break down the time rated trammer gets his daily wage of Rs. 1-4-0, it is unfair and was never intended that the piece rated trammer should be given make up wages to bring his earnings to 75 per cent of Rs. 1-5-0 being the wages of category V workmen and not be paid Rs. 1-4-0 which is the wages of a time rated trammer and which is the minimum prescribed for him under para 152 of the

decision of the Labour Appellate Tribunal. Shri Mehta has further argued that it was never intended that the piece rated trammer should be put in a less advantageous position than the time rated trammer and that if that was done the very incentive of piece rate would be destroyed. Shri Mehta has stated—and this was not denied—that in other collieries under the directions contained in para 152 of the Labour Appellate Tribunal's decision the piece rated trammers are paid the minimum of Rs. 1-4-0 being the wage fixed for time rated trammers. He has urged that even for time rated trammer this company has been obliged to provide higher incentive payments and in that connection he has filed two letters from the management dated 12th May 1959 and 1st June 1959, which support his statement. (Exhibits W-A and W-B).

11. The management, on the other hand, in its written statement has pleaded that the relevant paragraphs of the Award which govern the payment of the minimum wage to a piece-rated trammers are 765 and 766 of the Majumdar Award and paragraph 195 of the decision of the Labour Appellate Tribunal, which deal with the minimum guaranteed wage and that the directions contained in para 152 of the decision of the Labour Appellate Tribunal do not apply; that the workmen have confused the directions relating to the fixation of the minimum wage guaranteed for the piece-rated workers. The management has stressed the words "for a day's work" occurring in para 152 of the Labour Appellate Tribunal's decision and has argued that a piece rated trammer is to get a minimum wage of Rs. 1-4-0 only when he puts in a full day's work and that when there is a break down the piece rated trammer would only be entitled to the minimum guaranteed wage of 75 percent of Rs. 1-5-0, being the wages of a category V workmen. Shri Bala for the company has argued that on a proper construction of various paragraphs of the Majumdar Award and the decision of the Labour Appellate Tribunal, the position is that if the earnings of a piece rated trammer consistently fall below those of the time rated trammers because the rate fixed by the management was low, the trammers would be entitled to claim minimum wage equivalent to that of a time rated trammer under the directions of para 152 of the Labour Appellate Tribunal's decision. If, however, their wages drop below those of the time rated trammer due to break down and such other causes then the trammers who had not and could not put in day's work would be entitled to 75 per cent of the wage fixed for his category as the minimum guaranteed wage. He has argued that any other interpretation except the above would lead to absurdity and inconsistency and also amount to preferential and discriminatory treatment to trammers. He has, therefore, submitted that in terms of the Labour Appellate Tribunal's decision piece rated trammer like all other piece-rated worker, is entitled to the minimum guaranteed wage of 75 per cent of the rate fixed for the piece rated trammers and an award may be passed accordingly.

12. In my opinion, there are certain important facts connected with the wages of trammers which must be borne in mind when interpreting the directions contained in the Majumdar Tribunal's award as modified by the decision of the Labour Appellate Tribunal. The first fact to remember is that trammers are the only category of mine-workers who are both time rated and piece rated. Before the Majumdar Tribunal as well as before the Labour Appellate Tribunal of India a section of the workers had pleaded that all trammers should be made time rated. This demand was opposed by the employers as also by another section of labour who had pleaded that the piece rate for trammers should not be abolished because it was an incentive for quicker rotation of tubs resulting in greater production and higher earnings for the trammers; in other words, that the piece rate provided an incentive to the trammers to produce more and earn more. It was in consideration of this that the Majumdar Tribunal and also the Labour Appellate Tribunal did not concede the demand of a section of the workmen for making all trammers time rated. Another important fact to remember is that though for the other categories of piece-rated workers a work load has been fixed by the Majumdar Tribunal, no workload has been fixed for the trammers, or the reason that conditions of work of trammers vary from colliery to colliery, and even in sections of the same colliery. It is for this reason that directions were given by the Labour Appellate Tribunal that the piece rate should be so adjusted as to enable the piece rated trammer to earn the wages of a category V workmen. The important point is that when dealing with the minimum guaranteed wage for piece rated workers and providing for the review of the existing piece-rated, the objective was that piece rated workers should be enabled to reach their output as fixed by the award. As observed by the Majumdar Tribunal in para 765 of its award:

"It is only to prevent these that we are directing that the earnings of the piece-rated workers should be reviewed at the end of every 13 working days and if on account of the factors for which the piece-rated



workers are not responsible *they cannot reach their outputs as fixed by us*, the management should make up the deficiency to the extent of 75 per cent of the total emoluments that they would have earned under normal conditions after setting off towards the same any 'lay off' compensation that may have been paid under Section 25C of the Industrial Disputes Act." (Underlining mine).

But as I have stated earlier no piece rate or output was fixed for the piece rated trammers. No doubt, para 766 of the Majumdar Tribunal contains a direction that what was directed in para 765 shall also apply to trammers and other piece rated workers. But it must be remembered that the Majumdar Tribunal had not fixed any minimum wage for piece rated trammers. It had fixed a minimum wage for time rated trammers when placing them in category III. For the piece rated trammers the Majumdar Tribunal had directed the payment of Re. 0-1-0 more than the existing rate. The Labour Appellate Tribunal however by para 152 directed that in no event shall a piece rated trammer get for a day's work wages less than that fixed by it for the time rated Trammer. Shri Bala for the company has emphasised the words "for a day's work" appearing in para 152 and has argued that the wages fixed for a time rated trammer is Rs. 1-4-0 basic wage can be paid only when the piece rated trammer has put in full day's work, and that when there is a break down the piece rated trammer cannot be deemed to have put in a day's work and will therefore be entitled only to the minimum guaranteed wage of 75 per cent of the wages of his category i.e. 75 per cent of Rs. 1-5-0 per day. If this interpretation were to be accepted then there would be an anomaly between the time rated trammer and the piece rated trammer because it is admitted that where a break down occurs and no lay off is declared the time rated trammer is paid his minimum wage of Rs. 1-4-0 whilst the piece rated trammer in this colliery gets only 75 per cent of Rs. 1-5-0. In my opinion, the Labour Appellate Tribunal never intended to make any such invidious distinction to the disadvantage of the piece-rated trammer. If anything, the intention of the directions contained in para 152 was that for the same conditions of work in a day, the piece rated trammer should not get less than what a time rated trammer is paid. That in my opinion is the intention and purpose of the directions contained in para 152 of the Labour Appellate Tribunal's decision. It is to be remembered that no such direction has been given with regard to any other category of piece rated workmen. In my opinion, this directions was given with regard to the trammers in order to protect the piece rated trammers and to see that he was not placed in a less advantageous position than the time rated trammer.

13. In the result, I would answer the question under reference thus.

In the terms of the Labour Appellate Tribunal (Colliery Disputes) decision dated 29th January 1957, in the event of a piece-rated trammer not earning at least Rs. 1-5-0 per day due to break-down, derailment and such other causes and for which no lay-off is declared, he is entitled to the minimum daily wage of Category IV prescribed for a time-rated trammer and not 75 per cent of the rate fixed for piece-rated trammers.

14. Since the workmen have succeeded, I award Rs. 100 as costs to the Union.

DHANBAD;

The 11th November, 1959.

SALIM M. MERCHANT,

Presiding Officer,

Central Government Industrial Tribunal, Dhanbad.

[No. LRII/1(7)/59.]

New Delhi, the 23rd November 1959

**S.O. 2639.**—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the General Assurance Society Ltd., Bombay and their workmen.

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

REFERENCE No. 31 of 1959.

Management in relation to the General Assurance Society Ltd., Bombay.

AND

General Insurance Employees' Union, Bombay.

PRESENT: Shri Salim M. Merchant, B.A.L.L.B., Presiding Officer.

## APPEARANCES:

*For the Workmen:*

Shri K. T. Sule, Vice-President, with Shri K. S. B. Pillai, General Secretary, General Insurance Employees' Union.

*For the Employers:*

Shri L. C. Joshi, Labour Officer, Bombay Chamber of Commerce, with Shri R. S. Mehta, Divisional Manager, General Assurance Society Ltd., Bombay.

Dhanbad, the 14th November 1959

Industry: General Insurance

State: Bombay.

## AWARD

The Government of India, Ministry of Labour and Employment, by Order No. LR. II (14)/57 dated the 6th October, 1958, on the joint application to it dated 22nd November, 1957 of the parties abovenamed for referring this industrial dispute to an Industrial Tribunal for adjudication, was pleased in exercise of the powers conferred by Section 10(2) of the Industrial Disputes Act, 1947 (Act XIV of 1947), to refer the dispute for adjudication to Shri P. D. Vyas, Central Government Industrial Tribunal at Nagpur. Thereafter, upon the services of Shri P. D. Vyas having ceased to be available, the Government of India, Ministry of Labour and Employment by Order No. LR. II-4(15)59 dated 5th May, 1959, was pleased to refer this dispute to me for adjudication.

2. I may state that an industrial dispute between this company at Calcutta and the General Assurance Society Employees' Union, Calcutta, being Reference No. 32 of 1959, was also similarly referred to me and that at the hearing of the dispute before me at Calcutta on 20th July, 1959 the parties filed the terms of settlement which had been reached between them and I gave my award dated the 21st July, 1959 in terms of that settlement, which has been published in the Gazette of India, Part II, Section 3, sub-section (ii) dated the 15th August, 1959. In this dispute I shall refer to that agreement as the "Calcutta Agreement" and to that Award as the "Calcutta Award."

3. Both the parties have adopted the written statements which they had filed when this dispute was pending before Shri P. D. Vyas where it was numbered as Reference No. (C. G. I. T.) 17 of 1958.

4. After the dispute was referred to me as stated earlier, I fixed this dispute for hearing along with Reference No. 32 of 1959, at Calcutta on 23rd June, 1959. The Union, however, wanted the hearing of this dispute to take place at Bombay and the management wanted this dispute to be heard at Calcutta along with Reference No. 32 of 1959, as its contention was that when the joint application under Section 10(2) was made to Government by the parties, it was agreed that the two disputes would be heard together at Calcutta. I heard the submissions of the management on this point at Calcutta on 23rd June, 1959, at the hearing of Reference No. 32 of 1959, but as I was not satisfied that there was any such agreement as alleged on behalf of the management and as the two disputes were referred by Government as separate disputes under separate orders of reference and as I was satisfied that if the dispute of the Bombay Branch was to be heard at Calcutta, the Union would be at a disadvantage as it had pleaded that it was not in a position to meet the expense of its representation at Calcutta. Accordingly, by a separate order dated the 23rd June, 1959, I directed that this dispute (Reference No. 31 of 1959) should be heard at Bombay, and the dispute was therefore heard at Bombay. The arguments of the parties concluded on 10th September, 1959, after which the management by its letter dated the 6th October, 1959 forwarded to me at Dhanbad certain awards, decisions and authorities which it had cited at the hearing. I may state that I have only considered such of the

awards, decisions and authorities, which were cited at the hearing, and have only taken into account the documents which the parties had filed at the hearing.

5. Before dealing with the demands on their merits it is necessary to give a brief account of this company. It is a public limited company and was started in 1907 with an authorised capital of Rs. 5,00,000 and was mainly doing life insurance business with its head office at Ajmer. Messrs. Soorajmal Nagarmulls of Calcutta—who are associated with the House of Jallans—appear to have supported the company in 1943 after which its authorised capital was raised to Rs. 10,00,000. The head office of the company was then shifted to Calcutta. The company does fire, marine, accident and miscellaneous insurance business. It has branches in several parts in India such as Ajmer, Delhi, Madras and Bombay. The Bombay branch was established in 1944. The company transacts general insurance business and during 1958 the Bombay office earned premium income of Rs. 8,35,823 (Company's statement Exhibit E-2) from Fire, Marine, and Accident business. The company has filed a statement (Exhibit E-3) which shows that though during 1957 its net premium income from its general business of fire, marine, accident and miscellaneous was higher than for 1956, it had suffered a substantial loss in 1957, though for 1956 it had earned a small over-all profit. In 1958, though the Profit and Loss account shows a small profit, due to a carry forward loss of a substantial amount in the balance sheet, the balance sheet shows a loss year. I may state that the Fire Revenue Account for 1958 shows a substantial profit and there was a profit also in the Marine Revenue Account, but the Accident and Miscellaneous Revenue Account showed a substantial loss and that the net profit figure has been arrived at after making all adjustments and making a further substantial provision for bad and doubtful debts. The Directors Report states that the loss in the Accident and Miscellaneous Revenue Account was "mainly due to unsatisfactory claims experience" which would suggest that with tightening up of the organisation the company's future prospects could certainly improve. I may state that the total funds of the company are Rs. 36,84,370 as stated in the Directors Report for the year ending 31st December, 1958.

6. The history of the present dispute is that on 17th December, 1954, an agreement was entered into between the Company and the General Assurance Employees All India Association, by which common wage and salary scales and other terms and conditions of service of the employees of the company in all its branches throughout India were agreed to. A copy of this agreement has been annexed to the Union's Statement of Claim as Annexure 'A' thereto and I shall hereafter refer to it as the "Agreement of 1954." It is admitted that the employees of the Bombay Branch were also covered by this agreement. On 27th May, 1957, this Union gave the requisite two months statutory notice terminating this agreement and on 30th May, 1957, submitted a charter of demands—containing in all 21 demands—which are the subject matter of the present reference. At about the same time the Calcutta Union also gave a notice terminating the agreement of 1954 and submitted a separate charter of demands. Conciliation proceedings followed and ultimately by a joint application dated 22nd November, 1957, both parties applied to Government for reference of the dispute to a Tribunal for adjudication under Section 10(2) of the Industrial Disputes Act, 1947.

7. The Bombay Branch of the company at present employs 28 clerks and 8 peons making a total of 36 employees in all, and the present dispute is confined to them. The Union has furnished a statement giving a list of the present employees, the dates when they joined service, their present salaries, dearness allowance and designations etc. (Annexure 'C' to the Union's written statement). The Bombay office controls the work of a few sub-branches but it is admitted that the employees of those sub-branches are covered by the Calcutta agreement and are not parties to this dispute.

8. Before dealing with the demands on their merits it is necessary first to deal with certain contentions raised by the company in its written statement of reply. The first contention urged is that the terms of the 1954 agreement which at present govern the wages and other conditions of service of the Bombay employees, cannot be replaced or altered unless change of circumstances justifying the present set of demands is established by the Union. The management has contended that there have been no change of circumstances since the agreement of 1954, to justify the demands under reference, but that on the other hand the financial position of the company has since deteriorated which would have justified reduction of the privileges which it had granted under the agreement of 1954. Shri L. C. Joshi in support of this contention has relied upon the decision of the Hon'ble Supreme Court in the case of *Burn & Co.* (1959-I-L.L.J.p.450) where it was held that in the absence of anything to show that between the date of the last agreement

between the parties by which the wage scales were fixed and the date of the reference of the dispute, circumstances had so altered as to make the existing scales of pay and grades inadequate or unreasonable to meet the conditions prevailing at the time the industrial dispute was referred to the Tribunal, it must be held that any revision of the existing wage scales or grades was unjustified. Shri Joshi has also relied upon the decision of the Labour Appellate Tribunal in the case of the Muzaffarpore Electric Supply Workers Union and Muzaffarpore Electric Supply Company Limited (1957-II-L.L.J.p.542), and Aspinwall & Co. Ltd. Cochin and their workmen (1955-II.L.L.J.p.269) where a similar proposition has been laid down. Shri K. T. Sule in reply contended that since the agreement of 1954, there had been material changes in circumstances, which have made the wage scales, rate of dearness allowance and other conditions of service fixed by that agreement, inadequate and unreasonable in the context of conditions existing in 1958, when the dispute was raised. He has referred to the change in the concept of fair wage and living wage as stated by Government not only with reference to the Second and Third Five Year Plans, but the change in wage policy as envisaged in the Resolution of the 15th Tripartite Labour Conference; that the cost of living index in Bombay has gone up considerably since 1954 to 1958; that since 1954 other General Insurance Companies in Bombay by agreement with this Union and under awards are paying higher scales of pay, and rates of dearness allowance than fixed by the agreement of 1954. He has also pointed out that by the recent agreement dated 20th July, 1959 in Reference No. 32 of 1959 entered into by this company with the Union representing its workmen at Calcutta and elsewhere the company had agreed to pay higher rates of basic pay, higher dearness allowance and also to grant improved conditions of service, which showed that the company itself accepted that an improvement over the agreement of 17th December, 1954, was justified by the change in circumstances which had taken place between 1954 and 1958.

9. I am satisfied that these contentions of Shri Sule have considerable substance. There is no doubt that since the agreement of 1954 till 1958, when this dispute was raised, there has not only been a material change in the concept of fair wage and the principles governing the fixation of minimum and fair wages, but also a general improvement in the rates of basic pay and dearness allowance paid for like category of employees by general insurance companies in Bombay, which have made the terms of the agreement of 1954 both inadequate and unreasonable, and justify their improvement. The company has under the Calcutta agreement of 20th July, 1959 granted improvement in the scales of pay and rate of dearness allowance and other benefits fixed for its workmen at Calcutta and other centres by the agreement of 1954. This shows that the company itself recognises that there has occurred such a change in circumstances since 1954, as to justify a revision and improvement in the scale of pay, rates of dearness allowance and other conditions of service generally granted by general insurance companies to that there has been a change of circumstances since the agreement of 1954 as to justify the raising of this industrial dispute.

10. It has next been urged by the company in its written statement (para 20) that as under the agreement of 1954, a common standard of wage structure and other conditions for its employees employed in all its branches, throughout India as far as practicable, was formulated, it would be inadvisable to change the principle. It has urged that in support that services of the company's employees are transferable from one branch to another and, therefore, a uniformity in wage structures and conditions of service should be maintained, unless differences are essential according to the situation and circumstance of the case. At the hearing Shri L. C. Joshi urged that in no circumstance a better wage-structure and a higher rate of dearness allowance and more favourable other terms and conditions of service should be prescribed for the Bombay employees than has been agreed to by its Calcutta and other employees under the Calcutta agreement. But it must be remembered that this is a separate industrial dispute which the Bombay workmen have raised and many of the demands in this reference are different from the demands raised by its Calcutta employees. The demands for pay scales and rates of dearness allowance to mention only two are materially different. Besides, the Calcutta dispute was settled as a result of an agreement, to which these workmen were not a party. Besides, the scales of pay, rates of dearness allowance and other conditions of service generally granted by general insurance companies to its employees in Bombay are in line with those generally paid by other commercial and business firms in Bombay. Because the agreement of 1954 had granted a common wage-structure and other conditions for its employees, it cannot necessarily be held that the Bombay employees are precluded from claiming higher scales of pay and rate of dearness allowance than those agreed to by the Calcutta employees, even though the same may be justified by the higher cost of living in Bombay and on the basis of the higher scales of pay granted to like categories of

employees in general insurance companies in Bombay. I am not impressed by the company's contention that because its employees are liable to be transferred from one branch to another, there should be a uniformity in their conditions of service, in all its branches throughout India. Such a proposition has not been accepted by Industrial Tribunals, and the management is evidently well aware of it, because it has conceded that differences would be justified on the basis of variations in local conditions some of which were recognised even in the agreement of 1954. While I do not accept the general proposition as enunciated by Shri L. C. Joshi, I shall in adjudicating upon the demands under reference, certainly bear in mind the terms of the settlement reached between the company and its employees in Calcutta on like demands and shall make such changes in them, as appear to me to be justified by the different conditions prevailing in Bombay, and bearing in mind the scales of pay, rates of dearness allowance and other conditions of service prevailing generally in insurance companies in Bombay.

11. I now proceed to discuss the demands on their merits.

12. I shall first discuss the demands relating to salary scales and dearness allowance, which are embodied in Demand No. 1 (a) to (d) and Demand No. 7(a) which are as follows:—

*Demand No. 1—Salary Scales*

(a) Lower Grade Staff (Sepoys) Rs. 60-5-150. Mr. S. P. Chawan should be promoted as Head Peon and he should be paid 3 additional increments.

(b) All employees other than Lower Grade Staff working as Clerks, Telephone Operators, Typists, Stenographers, Comptists etc. shall be called 'Assistants' and their salary scales shall be as under:—

Rs. 100-10-150-15-225-20-325-25-450.

(c) The present 'A', 'B' and 'Spl.' Grades shall be abolished and the above one single grade shall be introduced for all Assistants.

(d) Head Clerks: The present Departmental Heads including the Cashier shall be considered as Head Clerks and their salary scales shall be:

Rs. 300-25-500.

Promotions to the Head Clerks' Grade shall be from amongst the existing staff strictly according to seniority.

*Demand No. 7(a)—Dearness Allowance.*

Dearness allowance for all the staff shall be paid on the following basis:—

Salary.	Dearness allowance
On first Rs. 50 of the basic salary	Rs. 75/-
For the next Rs. 51 to 100 basic salary	50%
For the next Rs. 101 to 200 basic salary	30%
For the next Rs. 201 to 300 basic salary	25%
For the next Rs. 301 to 450 basic salary	22½%
For the next Rs. 451 and above basic salary	20%

Minimum Dearness Allowance payable shall be Rs. 75/- per month.

13. The wage scales and rates of dearness allowance in force at present are those which were settled by the agreement of 1954. For the clerical staff there are the following three scales of pay:—

Grade 'B': Rs. 65-5-100-108-7-165.

Grade 'A': Rs. 160-10-250.

Special Pay Grade: Rs. 270-15-350.

Lifter: Rs. 40-4-60-5-80.

14. For the subordinate staff there are the following two scales of pay:—

Substaff Peons: Rs. 26-2-46.

Daftris, Liftman, Havildar and Jamadar: Rs. 40-4-60.

15. The present rate of dearness allowance is the flat rate of Rs. 50/- per month for all clerical staff and Rs. 37/- for the subordinate staff employed at the Bombay Office. I may mention that under the 1954 agreement, different rates of dearness allowance were prescribed for the clerical staff at the head office at Calcutta and other branches than for the clerical staff at Bombay. For the subordinate staff there is a common rate of dearness allowance of Rs. 37/- per month for the Calcutta, Bombay, and Madras offices, but of Rs. 32/- per month in other branch offices.

16. In support of these demands the Union has urged, (1) that the present monthly earnings by way of basic and dearness allowance of both the clerical and subordinate staff fall far below their minimum requirements of their class, (2) that other general insurance and commercial companies in Bombay pay their employees of like categories much higher total emoluments made up of basic wage and dearness allowance per month, and (3) that the cost of living for Bombay City has increased abnormally since the agreement of 1954 as proved by the fact that the average cost of living index number had risen from 359 for 1954 to 405 being the average for the first seven months of 1959, an increase of 46 points, which has not been neutralised in any way.

17. The management in opposing this demand has mainly contended, (1) that the company has not the financial resources to grant the higher scales of pay and rate of dearness allowance demanded by the Union. In support it has filed its audited annual reports of accounts for the years 1954 to 1957 which show that its annual profits since 1954 particularly after nationalisation of the life insurance business in 1956 have been meagre and in 1957 it had suffered a heavy net loss, (2) that its expense ratio for 1954 was within the statutory limits but in 1955 the expense ratio had exceeded the statutory limit by 5.3 per cent. in 1956 by 7.2 per cent. and in 1957 by 9.2 per cent. (3) that its general insurance business under the heads, fire, marine, and accident had not shown any improvement during the last 3 years and that the index number of the general insurance business in India for 1957 did not bear out prospects of any general improvement in the general insurance business. It has in support filed four statements Exhibits E-1, E-2, E-2(1) and E-3. The management has also filed a statement (Exhibit E-10) being an extract from the Indian Insurance Year Book 1958 to show that the index number of general insurance business in India has remained almost stationary recording a rise of only 0.7 (1.7 estimated) during 1957 as against the increase of 4.2 in the year 1956 and (4) that the Bombay branch has been earning small annual profits which could not possibly justify the grant of any of the demands made by the Union.

18. Shri K. T. Sule for the union has argued that in adjudicating upon a dispute of what should be the fair wages it is not the capacity of the concerned individual unit that should be considered but the capacity of the industry to which it belongs on an industry-cum-region basis after taking a fair cross-section thereof. This is the principle laid down by the Hon'ble Supreme Court in the cases of the Express Newspapers Limited (A.I.R. 1958-S.C.P. 578) and in Lipton Limited Versus their employees (1959-I-L.L.J.p. 443). On the question of the capacity to pay the Hon'ble Supreme Court in the Express Newspapers Limited has laid down the following principles:—

“The principles which emerge from the above discussion are:—

- (1) That in the fixation of rates of wages, which include within its compass the fixation of scales of wages also, the capacity to pay is one of the essential circumstances to be taken into consideration except in the case of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity.
- (2) That the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross-section of the industry, and
- (3) That the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product—no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.”

Shri C. L. Joshi, for the company has argued that it is the capacity to pay of the concerned individual unit before the Tribunal which should be taken into account and that as the company had not the capacity to meet the Union's demands, they should be rejected, and that at best only such improvement should be granted as had been agreed to by its employees in Calcutta and elsewhere by the Calcutta Agreement of 20th July, 1959. I cannot, however, accept this contention of the management as it is now well settled law after the decisions of the Hon'ble Supreme Court in the cases of Express Newspapers Limited and Lipton Limited, that the capacity to pay is not to be judged on the basis of the capacity of the individual unit whose workmen have raised the dispute, but on the capacity of the industry to which the union belongs taken on an industry-cum-region basis, after taking a fair cross-section of the industry. In fixing the wage scales and the dearness allowance and the other demands my approach in this dispute will be to see what a fair cross-section of the general insurance business companies in Bombay are paying to their employees of like category. Both the Union and the management have filed statements showing the scales of pay and dearness allowance being paid by a large number of general insurance companies in Bombay to their clerical and subordinate staff, and the salary and wage scales which I propose to fix will be on the basis of what a fair cross-section of the general insurance companies are paying to their employees in Bombay. Of course, in fixing the proper rate of dearness allowance the rise that has taken place in the cost of living in Bombay since the agreement of 1954 was entered will also be taken into account.

19. Shri Sule has urged that a "need based wage" was the minimum that should be given. In support he has argued that all wage fixing authorities and Tribunals were bound to follow the formula for wage fixation as embodied in the tripartite Resolution of 11/12th July 1957 which was adopted at the 15th Indian Labour Conference to which not only the employers and workmen but also the Government were parties. Shri Sule has in this connection relied upon the award of Shri F. Jeejeebhoy, National Industrial Tribunal, in the dispute between Brooke Bond (India) Limited and its workmen (Government of India Gazette Part II Section 3(ii) dated the 27th June, 1959 p. 1483) where the learned Tribunal accepted the contention that the tripartite resolution was binding on all the wage fixation authorities and wages should be fixed on the need based formula. Shri Sule has argued that as stated in Brooke Bond (India) Limited's award the minimum need-based requirement of a family of 3 consumption units in Calcutta city on the cost of living of 1957/58 would be Rs. 127/- for vegetarian and Rs. 156/- for non-vegetarian diet on the basis of the enquiry conducted by the Central Textile Wage Board, of which Shri F. Jeejeebhoy is the Chairman. He has also argued that the minimum need based requirement of a family with 3 consumption units in Bombay City would be Rs. 155.45 for a vegetarian diet and Rs. 180.89 for the non-vegetarian diet. He has argued that this is supported by the findings of the Cement Wage Board and the enquiry conducted by the A.I.T.U.C. and I.N.T.U.C. who had worked out the need based requirement in Bombay at Rs. 146.70 and Rs. 140/- respectively on the level of prices prevailing in March 1957.

20. Shri Joshi for the management has argued that the Tripartite Resolution has no binding force and has urged that the Union had not been able to establish the correctness of the figures of the need-based requirement of an average family of 3 consumption units as stated by Shri Sule and that in any case the company could not afford to pay wage scales on that basis.

21. Even if I were to accept the Tripartite Resolution of the 15th Indian Labour Conference as laying down a formula which must be followed by all wage fixing authorities including adjudicators, the formula itself provides that if an adjudicator does not accept the need-based formula it must give reasons for not so doing. In my opinion, in this case it would be impracticable to accept the demand made by Shri Sule. For one thing, the financial position of the company also not justify any such heavy burden being placed upon it. The union relies on certain statements filed by it to prove that the requirements of a middle class family consisting of 3 consumption units in Bombay City is Rs. 585.25 nP, calculated on the basis of prices prevailing in Bombay in January 1958. (Exhibit W-E). It has also filed a statement showing the family budget of each of the 30 employees in this concern which seeks to show that there is a substantial short fall in their monthly requirements compared to their monthly income. [Exhibit W-F(1)]. No evidence was, however, led at the hearing in support of these two statements which appear to me to be unrealistic and exaggerated to say the least. In my opinion, the proper approach to adopt in this case is the region-cum-industry basis of approach viz. to fix basic pay and dearness allowance and other benefits on the basis of what is being paid by a fair cross-section of the industry in

Bombay to employees of like categories and I propose to adopt this basis of approach.

*Demand No. 1(a).*

*Lower Grade Staff (Sepoys) Rs. 60—5—150.* Shri S. P. Chawan should be promoted and should be paid 3 additional increments.

22. As stated earlier, under the Agreement of 1954 the subordinate staff were divided into two grades:

- (a) Peons for whom the scale of Rs. 26—2—46 was prescribed and
- (b) Daftry, Liftman, Havildar and Jamedar, who were placed in the scale of Rs. 40-4-60.

23. The union now wants that the lower grade staff (scpoys) should be placed in the grade of Rs. 60-5-150. This along with the demand for a minimum dearness allowance of Rs. 75 means that the union wants a total emoluments for the lowest paid lower grade staff to be Rs. 135 per month. The prevailing scales of pay for the subordinate staff in general insurance companies in Bombay are shown in the Union's statement (Exhibit W-C) which contain a list of 23 insurance companies of Bombay. That statement shows that 8 of these companies start their subordinate staff on a starting basic pay of Rs. 30; 11 start them on Rs. 35 and of the remaining four companies, two start them on Rs. 40, one at Rs. 45 and one at Rs. 54. By the Calcutta agreement, the pay scale of subordinate staff was by agreement raised from Rs. 26-2-46 to Rs. 32-2-46-4-62. From the statement filed by the Union it appears that subordinate staff in General Insurance Companies in Bombay are given a higher start and a higher maximum than fixed under the Calcutta agreement. From the statement of the Union (Exhibit W-C) I find that the lowest maximum of the scale for subordinate staff is Rs. 85 but the majority of the companies give a higher maximum of between Rs. 85 and Rs. 100. I was told at the hearing that none of the existing subordinate staff draws less than a basic wage of Rs. 44 per month. Compared to the general prevailing scales of pay of subordinate staff in the General Insurance Companies in Bombay the existing scale of pay is undoubtedly low and needs to be raised.

24. Shri Joshi has referred to the minimum wages fixed by the Government of Bombay under the Minimum Wages Act 1948 in certain industries. He has particularly referred to the minimum wage of Rs. 70 per month inclusive of dearness allowance fixed for an unskilled workman in shops and Commercial Establishments in Bombay. But it must be remembered that wages under the Minimum Wages Act 1948 are fixed for industries in which the workmen are unorganised and to prevent sweating of labour. The wages fixed under the minimum Wages Act cannot possibly be a basis for fixing fair wages in an well-organised and big industry like that of the General Insurance business, where the proper basis for comparison would be the wages paid in a fair cross-section of the industry. It is for the same reason that I am unable to accept Shri Sule's comparison with the wages paid in the Cotton Textile Industry in Bombay where on the current cost of living index number the minimum wage paid to an unskilled workman in a cotton textile mill in Bombay is nearly Rs. 113-50, made up of Rs. 30-00 basic wage plus about Rs. 83-50 dearness allowance per month.

25. After an anxious consideration I feel that the scale of pay for the subordinate staff should be raised to Rs. 35-2-45-4-65-5-75. This together with the dearness allowance of Rs. 45 which I propose to give them will provide the lowest paid subordinate staff a total remuneration of Rs. 80 per month and for a peon with 8 years' service a total remuneration of Rs. 102 and of Rs. 120 at the maximum, which I consider adequate in the facts and circumstances of this case.

26. The next demand is in respect of S. P. Chawan one of the peon in the Bombay office and it is claimed that he should be promoted as Head Peon and should be paid 3 additional increments. In support of this demand the Union has stated that though there are 8 peons in the Bombay office there is no Head Peon at present though upto the year 1952 the company was designating one of the peons as Head Peon or Havildar. According to the Union that post was abolished after the previous incumbent to the post of Head Peon or Havildar went away and the management has not filled that post thereafter. It claims that S. P. Chawan being the senior-most peon should be designated as Head Peon and should be granted 3 additional increments on his existing pay in the scale to be prescribed, with retrospective effect from 1st January, 1957, as demanded under Demand No. 3. The Union has further pointed out that Chawan has put in 13



years service and is at present drawing a basic pay of Rs. 46 being the maximum of the scale which he reached last year.

27. In opposing this demand the management in its written statement has argued that it is not necessary to have a Head Peon in the Bombay Office as there are only a small number of 8 peons and no additional increment for Chawan is called for.

28. In my opinion, considering that there was a post of a Head Peon or Havildar and the agreement of 1954 also provided for the post of Havildar, the union is justified in claiming that post for Chawan who is the senior-most peon and who has reached the maximum of the existing grade. The Union has claimed that Chawan should be granted 3 increments in the revised scale. The ends of justice would be met if Chawan is granted the benefit of one additional increment in the revised scale fixed by me for peons with retrospective effect from the date which I am fixing under Demand No. 3.

29. This brings me to the question of pay scales for the clerical staff, which is in three parts.

30. Firstly, the Union wants that all lower grade staff working as clerks, telephone operators, typists, stenographers, and comptists should be designated as Assistants. Secondly, the union wants that the existing "A", "B", and Special Grades should be abolished and one single grade shall be introduced for all assistants and the pay scale of Rs. 100-10-150-15-225-20-325-35-450 should be awarded. Under demand No. 1(d) the Union wants that the present departmental heads, including the cashier, should be considered as Head Clerk and their salary scale shall be Rs. 300-25-500 and that promotions to Head Clerks' grade shall be among the existing staff strictly according to seniority.

31. Before dealing with these demands, it is necessary to state that the existing scales of pay for the clerical staff as fixed by the Agreement of 1954 are:

Grade 'B'—Rs. 65-5-100-108-7-165

Grade 'A'—Rs. 160-10-250.

Special Grade—Rs. 270-15-350.

There is also a grade for lifters of Rs. 40-4-60-5-80 but this category was not referred to at the hearing before me.

32. Of the 28 clerks employed in the Bombay Office it is admitted that 4 are in the existing special grade of Rs. 270-15-350; 13 are in grade 'A' of Rs. 160-10-250 and 11 are in the 'B' grade of Rs. 65 to 165. With regard to their qualifications, the management has stated that 2 of them are Graduates and they are both in the 'Special Grade' 13 are Matriculates and 13 are non-Matriculates and that none of these 28 employees has passed any insurance qualifying examination.

33. I may here mention that the dearness allowance payable to the clerical staff is at a flat rate of Rs. 50 per month and thus the lowest paid clerk in Grade 'B' gets a total remuneration per month of Rs. 115 made up of Rs. 65 basic and Rs. 50 as dearness allowance.

34. I may also state here that under the Calcutta agreement the employees of the company at Calcutta and all other branches were awarded the following improved scales of pay:—

Grade 'B'—Rs. 75-5-100-8-108-7-157-8-165-10-215-5-220

Grade 'A'—Rs. 160-10-250-15-310

Special Grade:—Rs. 270-15-345-20-405

Daftries Rs. 44-4-60-5-80.

I may state that there is evidently no category of Daftry in the Bombay Office and it is, therefore, not necessary to consider this category. It will be noticed that under the Calcutta agreement the existing minimum of Grade 'B' was raised by Rs. 10 and the maximum was raised from Rs. 165 to 220. With regard to the Grade 'A' and the 'Special Grade' the minimum of the two scales have remained the same, but in the case of Grade 'A' the maximum has been raised from Rs. 250 to 310 and in the Special Grade from Rs. 350 to Rs. 405.

35. The Union first of all wants that the three grades, Grade 'B', Grade 'A' and the 'Special Grade' should be done away with and a common scale of pay should be fixed starting at Rs. 100 and rising to maximum of Rs. 450 per month.

Its main contention is that because of the various grades, the majority of the clerks are not allowed to reach the highest grade i.e. the Special Grade. It has been urged that the various grades operate as worse than efficiency bars because promotion from the lower to the higher grade is exclusively at the discretion of the management. The management in its written statement in reply has opposed this demand on the ground that these grades have been accepted by the Union by the agreement of 1954 and there was no justification for asking for the change. It is argued that multiple grades and scales of pay are necessary to meet the circumstances existing in the company and also on the ground that in commercial organisations of this size it is neither possible nor desirable to have one running scale of pay. From the union's statement (Exhibit W-A) it appears that in the majority of the 23 insurance companies shown there, there is one running scale of pay for the clerical staff and only three companies have 2 scales of pay and a like number have three scales of pay. The majority of the scales for the clerical staff start at Rs. 80 or more per month. There is, however, higher scales of pay for Sectional Heads and Head Clerks. The company's existing Special Grade is meant to provide for staff who could be considered Sectional Heads. There is no company which gives a lower starting salary than Rs. 70 per month, and the majority of the companies where a single scale of pay is enforced for clerks reach the maximum between Rs. 300 to Rs. 350 per month. Many of these scales of pay have been reached under agreements negotiated by this Union. In many companies there is a separate higher scale of pay for sectional Heads or Heads or Head Clerks. The company has in its turn filed a statement showing that in certain other insurance companies lower scales of pay are in force. After an anxious consideration of the scales of pay generally prevailing in companies in Bombay and the scales of pay agreed to in Calcutta, I think the proper thing to do is to detain the three scales of pay for the clerical staff namely Grades 'B', 'A' and the Special Grade.

36. Considering that if the minimum of Grade 'B' were to be raised beyond what was agreed to in Calcutta, say Rs. 80 per month none of the existing clerks would benefit and also remembering that the maximum of the 3 grades of pay as provided under the Calcutta Agreement also compares favourably with the pay scales prevalent in Bombay, I think the proper thing to do is to grant to the Bombay clerical staff the same revised pay scales as have been provided in the Calcutta Agreement. I therefore award the following three scales of pay:—

Grade 'B'—Rs. 75-5-100-8-108-7-157-8-165-10-215-5-220

Grade 'A'—Rs. 160-10-250-15-310

Special Grade—Rs. 270-15-345-20-405.

37. I am also not satisfied that a case has been made out for changing the existing designations of the clerical staff to those of assistants.

38. I am also not satisfied that the Union's demand that the present departmental heads who are in the Special Grade including the cashier, should be designated as Head Clerks. The four employees for whose benefit this demand has been made are in charge of sections, some of which has only one employee. I think it would be quite enough, at least for the present, that they should continue in the improved scale of pay, which I have prescribed for the Special Grade.

#### **Demand No. 7(a): Dearness Allowance.**

39. As stated earlier the present rate of dearness allowance as fixed by the Agreement of 1954 is Rs. 50 flat per month for the clerical staff and Rs. 37 per month for the subordinate staff. Under the Calcutta agreement the clerical staff were granted an increase of Rs. 10 per month in their existing rates of dearness allowance and the subordinate staff was granted an increase of Rs. 5 per month. It is admitted that in 1954, when the existing rates of dearness allowance was fixed the average cost of living index number for the working class in the city of Bombay was 359 which has risen to an average of 405 for the first seven months of 1959, which means a rise of 46 points, which has not at all been neutralised by the company. Even taking the average cost of living index number between 1954 and 1959 having increased by only 38 points as contended by the company in its statement Exhibit E-26, the rise is considerable and would justify the increase in dearness allowance which I am granting. Most insurance companies in Bombay are paying a higher rate of dearness allowance than what this company has been paying. I am, however, not satisfied that the dearness allowance needs to be raised to a minimum of Rs. 75 per month as claimed by the union and the percentage increases in dearness allowance claimed is also excessive. The union in support has relied upon the dearness allowance which

is paid in Bombay to the workers of the Cotton Textile Industry, who on the current cost of living index number gets a dearness allowance of about Rs. 84 per month. The agreements which this very union has entered with other General Insurance Companies in Bombay also does not justify the rates of dearness allowance claimed by the union. The Union has not sought to link the dearness allowance with the cost of living index number, under which the monthly dearness allowance would rise or fall with the rise and fall in the cost of living index number. The Union has asked for a scheme with percentage increases by which the question of dearness allowance increases with each higher slab of basic pay. After an anxious consideration of the rates of dearness allowance paid by insurance companies in Bombay, I think the minimum dearness allowance for the clerical staff should be increased to Rs. 60 per month i.e. by Rs. 10 per month, for the salary slab between Rs. 51 to 100 per month. That would give the lowest paid clerk the basic wage of Rs. 75 plus Rs. 60 per month i.e. Rs. 135 per month. From the Union's exhibit W-F I find that as on 1st January 1958 only 3 of the existing clerks are drawing a basic salary of only Rs. 100 per month and all the rest are on basic salaries higher than Rs. 100 per month. This would mean that under the scheme I propose to adopt they will each get not less than Rs. 65 per month as dearness allowance. In the general insurance companies in Bombay a percentage increase over slabs of basic pay over Rs. 100 are granted and after a careful consideration of all the relevant circumstances I think the following Scheme of dearness allowance for the clerical staff would be reasonable:—

Salary	Dearness Allowance
Basic salary more than Rs. 51 but less than Rs. 101 per month	Rs. 60 per month.
Basic salary of Rs. 101 or more but less than Rs. 201 per month	Rs. 65 per month.
Basic salary of Rs. 201 and more but less than Rs. 301 per month	Rs. 70 per month.
Basic salary of Rs. 301 and more but less than Rs. 401 per month	Rs. 75 per month.
Basic salary of Rs. 401 and more	Rs. 80 per month.

I may say that I have based this scheme of dearness allowance on what the Life Insurance Corporation is paying but have increased the minimum by Rs. 5 per month.

40. For subordinate staff the dearness allowance is raised from Rs. 37 to Rs. 45 per month flat.

41. I think as in Calcutta the increased rate of dearness allowance for both the clerical and subordinate staff should be granted with retrospective effect from 1st June 1958, as the workmen have not had any neutralisation in the steep rise that has taken place in the cost of living index number for Bombay city since the agreement of 1954.

#### Demand No. 2:

'There shall be no efficiency bar at any stage in the scales demanded above.

42. The agreement of 1954 did not provide any efficiency bars in the scales of pay then agreed to. The company in the Calcutta agreement of 20th July 1959 also agreed to scales of pay without any efficiency bars. In view of these circumstances, and in view of the fact that I have not provided one running scale of pay for the clerical staff, I have allowed this demand and have not provided any efficiency bars in the scales of pay awarded by me for the clerical and subordinate staff.

#### Demand No. 3:

Retrospective effect to the salary scales demanded above shall be given from 1st January, 1957.

43. The union seeks to justify this demand on the ground that the charter of demands was submitted by it on 30th May 1957 and the management according to it treated the demands with indifference and it was only after insistent demand that the company on 22nd November 1957, agreed to make a joint application for reference of this dispute to adjudication.

44. The management has opposed this demand on the ground that the management had continued to grant the workmen their increments under the existing scales of pay. The management has also denied that there was any indifference on its part in dealing with the demands, and that some time was necessary for the Bombay office to receive directions from its Head Office at Calcutta.

45. The Union has relied upon certain awards of Industrial Tribunals where retrospective effect was granted from a date several months prior to the date of the order of reference. In this case though the parties had made a joint application dated 22nd July 1957 for reference of this dispute to an Industrial Tribunal, the Government made this reference only on 6th October 1958, after a lapse of one year. The delay in making the reference was evidently due to the fact that in the joint application to Government the parties to the Calcutta dispute had first prayed that that dispute be referred to a National Tribunal, but several months later, another joint application was made for referring the dispute to an Industrial Tribunal. No doubt, the Bombay workmen had made only one joint application and that too only on 22nd July 1957 for reference of the dispute to adjudication of a Tribunal and not a National Tribunal, but both Bombay and Calcutta parties were agreed that the dispute should be adjudicated upon by a common Tribunal, and hence the delay in reference of this dispute. Under the Calcutta agreement the revised wage scales have come into force from 1st January 1959 and the increased dearness allowance was agreed to be enforced from 1st June 1958. Bearing this agreement in mind, and also the fact that I am granting adjustment and special adjustments under demands Nos. 4 and 5 and the fact that even after the last agreement was terminated the workmen have continued to draw the annual increments, I think the fair thing to do is to direct that the revised scales of pay should come into force in Bombay also from 1st January 1959. With regard to the dearness allowance in view of the Calcutta agreement, I think it fair to grant it with retrospective effect from 1st June 1958, particularly as the workmen have not had benefit of neutralisation to any extent of the rather steep rise in the cost of living in Bombay since 1954.

#### *Demand No. 4: Adjustments.*

When salaries of old employees are to be fitted into new scales, the employees should be given rise according to the number of years of service i.e. the existing salary should be adjusted on a point to point basis.

46. This is a demand for adjustment of the existing salaries and wages on point to point basis into the new scales of pay awarded. I see no justification for the demand as the workmen have had the benefit of incremental scales of pay fixed under the agreement of 1954 and also had the benefit of fitment into those scales of pay. The only method of adjustment I feel justified is (1) every employee whose basic pay as on 1st January 1959 was lower than the minimum of the scales of pay awarded and applicable to him should be stepped up to such minimum and (2) with regard to the rest, where their basic pay as on 1st January 1959 was higher than the minimum prescribed but was not a step in the prescribed scale of pay, they should be stepped up to the next immediate higher stage in the scale of pay awarded and applicable to them, and be given one increment in the revised scale of pay applicable to them. The Calcutta agreement contained a direction for one increment in the revised scale with effect from 1st January 1959 and I think a similar direction is also justified in this case. The pay for the purposes of adjustment is to be the basic pay drawn by the employee as on 1st January 1959 and the adjustment to have effect from that date.

#### *Demand No. 5: Special Adjustment.*

Annual increments not paid as a result of the wrongful operation of existing Grade 'A', 'B', 'Special' for the years 1954, 1955 and 1956 should be sanctioned with retrospective effect from the date on which the increments were due and the total difference should be paid to the affected employees.

47. The union in its written statement in justification of this demand, has alleged that at the time of negotiations of the agreement of 1954 it was understood that those employees in Grade B on reaching a salary of Rs. 150 will be considered by the management for promotion to Grade A and similarly those employees who had reached the maximum of Rs. 250 of Grade 'A' would be expected to be promoted to the higher grade. But the management did not act upto this understanding and in the first year after the agreement of 1954 stopped four of the clerks in their grades and in the next year some more were similarly stopped. The union in its statement Annexure 'B' to its written statement has

given particulars of such cases and has also given particulars of the alleged losses which these workmen had suffered. The union has alleged that on the representation of the Union the Custodian, appointed by the Government on promulgation of the Ordinance taking over the control of the Life Insurance business, after a thorough scrutiny promoted and paid arrears to all employees who had not been promoted or who were not granted increments, but the management had failed to do justice to the affected employees in spite of representations made by the Union.

48. The management in its written statement has denied that there was any such understanding as alleged by the union at the time of the 1954 agreement. At the hearing, Shri Joshi argued that promotion to a higher grade was a managerial function and in support cited the decision in the case of the *Associated Cement Co. Ltd.* (1957—II. L.L.J. p. 559), where it was held that no interference in the matter of promotion to a higher grade would be justified unless *mala-fides* was proved. He has also referred to the decision in the case of the *Suadismitram Ltd.* (1958—II. L.L.J. p. 146) when it was held that there could be no automatic promotion to higher grade. But those decisions can have no application to increments granted on adjustment into higher scales of pay fixed under an award.

49. Under the Calcutta agreement the cases of those who had been staggered at the maximum of their scales was also considered and in clause (h) of the agreement on scales of pay, it was agreed as follows:—

"With regard to those employees who have been staggered at the maximum of the existing scale of pay applicable to them it is agreed that those who have been so staggered for 3 (three years) or more as on 1st January 1959 shall get two additional increments in the revised scale and those who have been so staggered for two years or more but less than three years as on 1st January 1959, shall get one additional increment in the revised scale with effect from 1st January 1959. This additional increment or increments shall be in addition to the one general increment provided for in clause (J) above. But the payment of the additional increment or increments for staggering shall not apply to those employees who have been promoted to a higher grade between 17th December 1954 and 1st January 1959. But they will all the same be entitled to the one general increment provided for earlier."

50. I think a similar direction would meet the requirements of the case of the Bombay employees also and I direct accordingly.

*Demand No. 6:*

If after the adjustment demanded above has been implemented any employee is found to be drawing higher salary the same shall not be reduced.

The union in its written statement of claim has stated that if any employee is found to be getting a higher salary than what he would be entitled to under the method of adjustment awarded herein the higher salary should be protected and not reduced. The union has argued that a similar protection was granted to the existing higher salaries of Government servants under the directions of the last Central Pay Commission. The management has not in its written statement in reply urged anything against this demand and at the hearing Shri Joshi did not advance any cogent arguments against it. The demand as I understand it and as it was presented at the hearing, only seeks to protect the existing salary which any employee is at present drawing if it is higher than the salary to which he would be entitled to under the method of adjustment prescribed under this award and no exception can be taken to such a demand. The demand is therefore allowed as stated by me above.

*Demand No. 7(b): Machine Allowance.*

(i) Assistants working in Typing Department working on machines such as comptometer, telephones, duplicating Machines etc. should be paid Rs. 20 per month as Machine Allowance.

(ii) Employees in Lower Grade operating machines and/or doing work connected with machines shall be paid Rs. 10 per month as machine allowance. (This applies to those who do cyclostyling work, Franking work and such other work connected with the machines).

(iii) Machine allowance shall be treated as part of salary for the purposes of Provident Fund, Gratuity Bonus and Leave.

*Demand No. 7(b)(i): Machine Allowance.*

52. The Union in its written statement has stated that in the Bombay office there are 7 full time typists, one full time comptist and one Telephone operator, who operates the Telephone switch board with 2 lines and six extensions. The union supports the demand for a machine allowance on the ground that this work involves technical skill and is also physically strenuous and a machine allowance is generally paid to typists, comptists in other general Insurance Companies, as also by the Life Insurance Corporation of India.

53. The management in opposing the demand has stated that the employees in question are properly and adequately paid for handling machines.

54. The union at the hearing filed a statement (Ex. W-H) which shows a list of 12 insurance companies in Bombay of which 10 pay a typing allowance, the majority of Rs. 10 per month; 7 companies pay a telephone allowance, the majority of which gave an allowance of Rs. 10 per month and 8 companies pay comptists an allowance, the majority of Rs. 10 per month. The management has on the other hand filed a statement (Ex. E.4) giving the names of 7 insurance companies in Bombay in which none of these allowances are paid.

55. I am not satisfied that there is any justification for a special allowance for the typists. Shri Joshi has rightly pointed out that the trend of recent awards by Tribunals is to reject such an allowance and he has in that connection referred to the Shastri Bank's Award in which such a demand was rejected. I have in my award in the Triton Insurance Company's dispute rejected a demand for an allowance for typists and for the reasons stated there, which equally well apply to this case, I reject the demand.

56. The Telephone Operator in the company is in the present grade 'B' and is drawing a basic salary of Rs. 250 per month and as I have increased and improved that grade of pay, I see no justification for granting any additional allowance to the Telephone Operator.

57. The comptist, however, stands on a different footing. In this company the comptist does no other duties, except to operate the machine. I am satisfied that considering the nature of his work for which he had to receive special training, and the fact that several insurance and other commercial firms in Bombay pay their comptists and extra allowance, I feel that an allowance of Rs. 10 per month would be adequate. This appears to be the rate generally prevalent. I, therefore, award the comptist in the Bombay office an allowance of Rs. 10 per month, which shall be paid with effect from 1st January 1959.

*Demand No. 7(b)(ii):*

58. In its written statement the Union has confined the demand to one Shri R. D. Velle, a member of the subordinate staff who operates a Franking Machine. The Union has pleaded that this job which he does in addition to his normal duties as a peon requires special knowledge and some skill and that normally such work is done in other offices by a junior member of the clerical staff. The management in its written statement has not rebutted this fact nor did it at the hearing deny the statement made by the Union. I would, therefore, direct that the member of the subordinate staff who operates the Franking Machine should be paid a monthly allowance of Rs. 3 per month payable from 1st January 1959.

*Demand No. 7(b)(iii):*

59. The next demand is that the allowances awarded herein should be treated as part of the Basic Pay for the purposes of Provident Fund, Gratuity, Bonus etc. The union has in support urged that this payment though called an allowance is really part of the basic pay. But this extra payment had not been claimed by the Union as increased wages, but as a separate allowance, and as such I am not satisfied that there is any justification for treating it as part of basic pay for the purposes of Provident Fund, Gratuity and Bonus etc. and this demand is rejected.

*Demand No. 7(d): Acting Allowance.*

(1) When an assistant in Head Clerks' Grade is on leave for six days or more, the senior most employee in the same Department shall be called upon to act in the absence of the Head Clerk and he who acts in the Higher Grade shall be paid an acting allowance of 20 per cent of the initial salary of the grade in which he acts or 20 per cent of his salary whichever is higher.

60. Though in its written statement the union has treated this demand as a general one payable in respect of all categories of employees, as formulated the demand is for granting an acting allowance to only those who officiate in the Head Clerks' grade and the company has urged that the demand must, therefore, be confined to that category. Officiating allowance is generally paid not only in the general insurance companies, but in other commercial concerns I have in my award in the industrial dispute of the Triton Insurance Company dealt with the various arguments which were urged by both parties on a similar demand. Similar arguments have been advanced in this case also. In Triton Insurance Company's dispute I had after considering the prevailing rates of acting allowance in the insurance business, directed that an employee who acts in the higher grade shall be paid an acting allowance of 15 per cent of the initial salary of the grade in which he acts or 15 per cent of his basic salary whichever is more, as the officiating allowance for the higher post, provided that the period for which he acts exceeds 21 days, and I would give a similar direction here, only for those assistants who officiate for employees in the Special Grade.

*Demand No. 7(c): Cash Allowance.*

(i) Those Assistants who do the work of handling cash and who do the work connected with Banks and other offices involving monetary responsibilities shall be paid Rs. 20 per month.

(ii) Delivery peons should be paid Rs. 10 per month.

61. The union in its written statement has stated that this demand is made in respect of one clerk of the cash department who handles cash and for one peon whose work involves carrying of cash to the banks and other offices. The union has urged that the delivery peons' work is more strenuous as they have to make quick deliveries of documents on the very day of the acceptance of the risk and have to climb up number of stairs of buildings as they are refused the use of lifts. The union has claimed that considering that delivery peons have to work out-doors in the heat of the day and in pouring rain, their work is more strenuous than those of peons who remain in the office, and they are entitled to some additional cash allowance.

62. The company in opposing this demand has stated that both the clerk in the cash section and the delivery peons are adequately compensated for the salary paid to them and the delivery of dak is the normal duty of peons.

63. At the hearing the union filed a statement (Ex. W-I) which contains a list of 18 insurance companies in Bombay of whom 8 pay cash allowance to Assistants (Clerks) who handle and are responsible for cash. The cash allowance varies between Rs. 15 to Rs. 5 per month—with the majority paying Rs. 10 per month. The statement also shows that 15 of these companies pay a cash allowance to the cash peon varying from Rs. 5 to Rs. 10 per month—with the majority paying Rs. 5 per month. The union has also pointed out that under the Calcutta Agreement, the management has agreed to pay the clerks who handle cash at Calcutta and other Branch offices a cash handling allowance of Rs. 10 per month. That allowance is to be paid to the cashier and the cash receiving clerk.

64. The management in opposing this demand has urged that of the two clerks who handle cash in the Bombay office Shri Bastodkar is placed in the Special Grade and Shri Parekh has been placed in Grade 'A' and therefore there was no justification for granting them any additional cash allowance. But there is nothing to show that they have been given these higher categorisation because they also handle cash. The onus of proving that was on the management and they have failed to discharge that onus. In the Triton Insurance Company's dispute I had rejected this demand for the reason that the union had then not been able to establish that cash allowance is generally paid in insurance companies. This company has accepted the principle of paying cash allowance by the Calcutta agreement. In its written statement the Union has limited this claim for the one clerk who handles cash in the cash department. I, therefore, award that the clerk in the Cash department who handles cash shall be paid a cash allowance of Rs. 10 per month with effect from 1st January, 1959.

65. I am not satisfied that there is any justification for any allowance to the delivery peons. It is the normal duty of peons to deliver letters, documents and papers expeditiously. The demand is not for an allowance to any particular peon whose duty is to pay in or receive cash from Banks and other offices. The demand for an additional allowance for delivery peons is rejected.

*Demand No. 7(e): House Rent allowance.*

A house rent allowance equivalent to 10 per cent of the total salary shall be paid to all employees provided that the minimum house rent allowance shall be Rs. 20 per month or in the alternative residential quarters shall be provided for the staff at subsidised rent.

66. In support of this demand the union has mainly referred to the difficulty of getting adequate residential accommodation in Bombay at reasonable rents. The Union has argued that it is the responsibility of the management to provide adequate residential accommodation or to pay its workmen house rent allowance in lieu thereof. The management resists this demand on the ground that providing residential accommodation to its staff is not its responsibility and that rent being one of the items in computing the requirements of the staff, is covered by the salaries and wages paid to them. In my opinion the union has not been able to justify the demand on its merits. Considering the observation of the Hon'ble Supreme Court in the case of the Palna Electricity Company (1959 II L.L.S. p. 366), the demand must be rejected.

*Demand No. 7(f): Overtime Sunday and Holiday work allowance.*

No employee shall be required to work before or after the office hours or on Sundays or Holidays if such contingency arises due to extraordinary circumstances; an employee called upon to do overtime work on working days or on Holidays or Sundays shall be paid an extra allowance as under:—

- (i) Overtime work beyond scheduled office hours shall be paid at double the rate of salary and dearness allowance in addition to the normal salary and allowance.
- (ii) Work on Sundays and Holidays shall be treated as overtime and paid at double the rate of salary and dearness allowance in addition to the normal salary and dearness allowance if the work is for or within the usual office hours.
- (iii) Work on Sundays and Holidays beyond the normal office hours of working days shall be paid at  $2\frac{1}{2}$  times the rates of salary and dearness allowance in addition to the normal salary and dearness allowance.
- (iv) Compensatory off shall be given for work done on Sundays and Holidays.

67. It is admitted that at present the Bombay office does not call upon its workmen to put in overtime work. The Agreement of 1954 provides that the work done by the employees in excess of the normal working hours will be paid for at  $1\frac{1}{2}$  times the basic salary on hourly basis. According to the Union, this provision is inadequate as (i) it is at a lower rate than provided in the Bombay Shops and Establishments Act. (ii) other insurance companies in Bombay pay overtime at higher rates. The Union claims that all overtime work beyond the scheduled hours of work should be paid at double the rates, inclusive of dearness allowance.

68. The company in its written statement in opposing this demand has urged that the provision in the Agreement of 1954 regarding payment for overtime work is adequate and no revision is called for. At the hearing Shri L. C. Joshi pointed out that in this company the clerical staff works for only 33 hours in the week as against 36 hours a week generally worked in other insurance companies and therefore the demand for overtime payment beyond the scheduled hours of work at the rates claimed by the Union was not justified. Shri Joshi has also referred to the provisions of the Bombay Shops and Establishments Act and the clarification with regard to the rate of overtime payment made by the Government of Bombay by which payment for overtime work at double the rate has been clarified to mean payment of one additional amount of day's pay. Shri Joshi has referred to my award in the Triton Insurance Company's dispute, where I have dealt with the clarification made by the Government of Bombay as referred to in the circular issued by the Bombay Chamber of Commerce dated 24th February, 1955.

69. Considering the lower weekly hours of work in this company as compared to the working hours in the other concerns, I am not satisfied that the union's demand for payment for overtime work on weekly days at double the rate is justified. I think the proper rate to prescribe for over-time work beyond scheduled hours should be at  $1\frac{1}{2}$  times the normal rate of basic wage and dearness allowance.



70. With regard to work on Sundays and Holidays beyond the normal office hours I do not think the demand of the Union for overtime at  $2\frac{1}{2}$  times the rate of salary and dearness allowance is justified. It is admitted that for working on Sundays the company grants them a substitute day off, but not for other paid public holidays. I accept the union's contention that merely giving a substitute day off would not be adequate compensation as by taking their holiday on the day when their friends and relations are at work they would not be able to relax and enjoy themselves as completely as they would on the scheduled holiday when they would have the company of their friends and relations. This principle has been accepted by several awards of Tribunals in Bombay. In the circumstances for working on Sundays and public holidays observed by the company, I direct that they shall be paid double their wages inclusive of dearness allowance and shall also be granted a substitute off day with pay.

71. I further direct that these rates of overtime payment shall come into force prospectively from the day this award comes into force.

*Demand No. 8: Proportion of Staff.*

- (a) After every six assistants there shall be one peon (This shall be in addition to the Bank Peon and Delivery peon, peons attached to the Manager and other offices of the Society).
- (b) In departments where the number of Assistants is less there shall be one peon irrespective of the number of assistants.
- (c) After every six assistants there shall be one Head Clerk and departments where strength of the Assistants is less than six, there shall be one Head Clerk.

72. In support of sub-demands (a) and (b), the Union has stated that of the 8 peons, four are sent out for delivery work and as they are unable to complete their rounds of delivery by the time the office closes, they are not available for office work during the day. Of the remaining four one attends to work at the Banks and one attends, exclusively on the Divisional Manager. Thus only 2 peons are available for the office work which puts the staff to great inconvenience in the discharge of their duties and disturbs the efficient working of the office. It has, therefore, in its written statement demanded that more peons need to be recruited.

73. The management in its written statement has argued that it is the management's function to determine the strength of staff and to allot work to them. It has characterised the demand of the union as arbitrary and has prayed that it should be rejected as unjustified.

74. At the hearing the union stated that the demand was not for more peons to be recruited but for their proper distribution for out door and office work, and the union has suggested the number of peons who should be allotted for out door work and who should be at the disposal of the staff and the officers; I am of the opinion this is not a matter in which the Tribunal would be justified in interfering. It is a matter for mutual arrangement between the management and staff. Demands (a) and (b) are, therefore, rejected.

75. With regard to sub-demand (c), the position is that there are certain sections in which there is only one clerk and on the basis of the union's demand 6 to 7 Head clerks would be necessary for this office which employs only 28 clerks. The management has opposed this demand and has stated that the office is controlled by the Assistant Manager and the Accountant and that the sectional heads are not doing any supervisory work. After hearing the submissions of the parties and considering the duty charts of the employees on record, I am not at all satisfied that this demand is justified and I reject the same.

*Demand No. 9: Age limit. Retirement age limit shall be 65 years.*

76. Under the Agreement of 1954 it was provided that ordinarily the age of retirement for all employees would be 58 years, but the management in its discretion could grant extension to any employee for any number of years on their applying for extension. By the Calcutta Agreement it was agreed that the age of retirement for all employees shall ordinarily be 60 years, but the management at its discretion may grant extension to any employee for any number of years on his applying for extension. The management has filed a statement showing that generally in insurance companies, the age of retirement is not higher than 58 years. In the case of Guest, Keen, Williams Private Ltd. Vs. Starling and others (1959-II-L.L.J. p.405) the Hon'ble Supreme Court, in view of the pleadings of the concerned workmen thought that it would not be unreasonable or unfair to fix the

age of 60 years as the age of superannuation. The Supreme Court has, however, made it quite clear that its finding should not be taken as a decision on the general question of fixing the age of superannuation in the case of industrial employees, and has in its judgment, laid down the following relevant factors to be taken into account by a Tribunal when fixing the age of superannuation:—

"In fixing the age of superannuation industrial tribunals have to take into account several relevant factors. What is the nature of the work assigned to the employees in the course of their employment? What is the nature of the wage structure paid to them? What are the retirement benefits and other amenities available to them? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute."

77. Bearing in mind these principles and the agreement entered into by the management with its employees at Calcutta and elsewhere, I direct that the same terms shall apply to its Bombay employees and I award accordingly.

#### *Demand No. 10: Leave Reserve.*

The work-load of the Assistants are considerably increased on account of not recruiting new hands after the exit of many assistants during the last 2 years. At least 1/10th of the staff in the Assistant's grade and Lower Grade shall be employed as necessary leave reserve for enabling the employees to avail themselves of the leave due to them and reducing the work load.

78. The Union in its written statement has urged that at present there are no leave reserves, which entails hardships on those employees who avail themselves of their privilege and other leaves, in as much as their work accumulates during their absence on leave. It has, therefore, claimed that at least 1/10th of the number of existing staff should be employed as leave reservists. The union has, however, led no evidence whatsoever in support of its allegations that work accumulates and has to be cleared off by the employee after his return from leave. It was on the contrary admitted that no employee has hitherto been refused his earned leave when he applied for it. This, together with the fact that no overtime is admittedly worked in this office, puts the union out of court. The management in its written statement has stated that the existing number of its staff is adequate to provide for the necessary leave reservists. Shri L. C. Joshi at the hearing cited a number of awards of Industrial Tribunals in Bombay (1957 I.C.R.p. 806 at p. 821 *Herbertson's and Co.* 1951 I.C.R.p. 545 *Tata Oil Mills Dispute and Bank's Award*), where such a demand had been rejected, especially when it was established that overtime work was not a normal feature and leave applications had not been generally refused which is also the case here. I am, therefore, not at all satisfied that this demand is justified. The same is, therefore, rejected.

#### *Demand No. 11: Uniform for Lower Grade Staff.*

In addition to the present set of uniform supplied, the Lower Grade Staff shall be given two shirts, one pair of chappals every year and those doing outdoor duty shall be given a rain coat and one pair of gum boots every year.

79. At present, the company annually provides to its lower grade staff two bush shirts, two pants and two caps every year and one umbrella every alternate year. The Union considers this provision inadequate and claims two shirts and a pair of chappal in addition. The union has argued that it is a common practice for insurance companies to supply their lower grade staff with footwear, gum boots and rain coat and umbrellas for the rainy season.

80. The management has opposed the demand for any more articles of apparel and footwear.

81. The union has in my opinion not been able to establish that generally in the insurance offices in Bombay any better uniforms are provided than what the company has been giving under its agreement of 1954. The demand is, therefore, rejected.

*Demand No. 13: Leave.*

The present leave rules should stay. Those employees who were not paid dearness allowance while encashing privilege leave should be paid dearness allowance also with effect from 1954 and no deduction of dearness allowance should be made in future while leave is encashed.

82. At the hearing the latter part of this demand was not pressed. The present leave rules will continue to operate.

*Demand No. 12: Bonus.*

The Society should pay to its staff and sub-staff a bonus equivalent to 2½ months salary with dearness allowance. Proportionate bonus may be paid to the employees who may not have completed one year's service during the year in question but had put in more than 3 months service.

83. It is admitted that irrespective of profit and loss the company has since 1944 when the Bombay branch was started, been paying annual bonus at the rate of one month's basic wage. The agreement of 17th December, 1954 relating to bonus provided as follows:—

"It is agreed that the indoor staff of the Society will be paid one month's basic salary as bonus during the month of January every year on completion of one year's service in the Society, excepting staff in general Department in Calcutta who will be paid Bonus as per present practice prevailing there."

84. Under the terms of settlement dated 20th July, 1959, in Ref. 32 of 1959, the company agreed to pay its employees at Calcutta and in its other branches bonus annually at the rate of one month's basic wages and dearness allowance. The union at the hearing has stated that it would be satisfied if an award is made raising the rate of the annual bonus from one month's basic wage to one month's basic wage and dearness allowance as agreed to by the company for its employees at Calcutta and all its other Branches. But the management resists this claim.

85. From the working of the demand and the union's written statement it is clear that its case is that there is a custom in this company to pay annual bonus to the employees of the Bombay Branch equal to one month's basic wage. The fact that no year is specified for which this claim is made makes it clear that the demand is for an improvement of the customary bonus and not for bonus out of the profits of any particular year. I am satisfied from the fact that one month's basic wage is paid as bonus to the Bombay employees regularly every year since the Bombay Branch was established in 1944 (except in one year), irrespective of whether there was a profit or not, bonus for a particular year is paid even before the closing of the financial year, that there is a custom to pay annual bonus in this company. Uptil January, 1957, bonus was paid for the previous year in the month of January of the following year i.e. the bonus for 1956 was paid in January 1957, but from 1957 the bonus for the year is paid in the month of October, even before the financial year closes. It was on this basis that the annual bonus for the years 1957 and 1958 was paid in the month of October of those years. This was no doubt done on the application of the Bombay employees, to enable them to receive the bonus for each year at Diwali time. But this point is that bonus is paid for each year without determining whether there would be a profit or loss for the year. Since the bonus has been paid regularly each year since the Bombay Branch was established, I am satisfied that a custom is established for payment of annual bonus.

86. The point now is whether that quantum of this customary bonus of one month's basic wages should be increased to include also the dearness allowance, as was done by the Calcutta agreement of 20th July, 1959, for the Calcutta employees and its employees in all its other branches. Shri Sule has argued that there should be no discrimination in the matter of payment of bonus between the Bombay employees and the employees of its other branches. It must be remembered that when the terms of settlement of the Calcutta agreement were reached in was clearly on the basis that what it would grant to its Calcutta and other employees would have to be paid by it to its Bombay employees also. If a lesser bonus were to be granted to the Bombay employees than what the company has agreed to pay to its employees at Calcutta, it would amount to discrimination and would also lead to industrial unrest. (See McLeod and Co. Ltd. and their workers-1953-II-L.L.J. p. 543, workmen of Karamchand Thapar & Bros. Ltd. vs. the Company-1953-L.A.C. p. 152 at page 160). In these circumstances, I think it would be justified in awarding to the Bombay employees the same annual bonus as the company has agreed to pay to its employees at Calcutta.

87. The Management has argued that in view of the provisions of clause (7) of sub-section (1) of section 31A of the Insurance Act 1938, the demand for bonus cannot be adjudicated before any Industrial Tribunal. In two earlier disputes in other General Insurance Companies cases I have upheld this contention. But then I was dealing with a demand for bonus out of profits and not for payment of customary bonus at a slightly higher rate. It must also be remembered that under the Controller of Insurance Circular No. 53-IC(1)/51 dated 20th November, 1952, whilst dealing with the provisions of clause (vii) to sub-section (1) of section 31A, he has clarified that the Central Government would not consider the payment of any bonus upto two months salary as unreasonable. Bearing this circular in mind and also the fact that the company has itself agreed to pay its employees in all its other branches throughout India bonus each year equivalent to one month's basic wage plus dearness allowance, I am of the opinion that the objection of the company must be over-ruled. I, therefore, award that with effect from 1st January, 1959, the workmen at the Bombay office shall be paid bonus equivalent to one month's basic wage and dearness allowance. No other directions are called for, except that workmen who have put in less than one year's service but more than 3 months service in the year shall be entitled to bonus proportionate to the service put in by them.

*Demand No. 14: Gratuity.*

(a) An employee on voluntary retirement or on resignation shall be paid gratuity at the rate of one month's salary and all allowances for every completed year of service (six or more months to be computed as one year).

(b) The amount of gratuity shall be calculated on the last rate of salary and all allowances which the employee shall be entitled to draw at the time of his retirement, resignation or termination of service.

(c) Full gratuity shall be payable to an employee who has completed 3 years of service at the time of his retirement, resignation or termination of service by the employer. In the case of death or retirement, resignation or termination due to permanent physical disability or mental infirmity or compulsory retirement, resignation or termination full gratuity shall be paid without any restriction of period.

(d) An employee voluntarily retiring or resigning within 3 years of service shall be paid gratuity at the rate of  $\frac{3}{4}$ th of a month's salary including all allowances for each year of service.

88. The employees of the company at its Bombay Branch were granted the benefit of gratuity for the first time under the agreement of 1954. In an industrial dispute which the Calcutta employees of the company had raised in 1953 they had under an Award of an Industrial Tribunal been granted the benefit of gratuity. The Scheme of gratuity as provided by the 1954 agreement was as follows:—

"It is agreed that the employees will receive gratuity on the following terms:—

- |  |  |
|--|--|
| (1) On the death of an employee while in the service of the Society.   | Half a month's basic wages for each year of continuous service subject to a maximum of 15 months basic wages to be paid to his heirs or assignees. |
| (2) On compulsory retirement from service.   | Half a month's basic wages for each year of service subject to a maximum of 15 months salary wages.  |
| (3) On termination of service by the Society for reasons of Physical or Mental Disability or any other reasons excepting dismissal for misconduct. | Half a month's basic wages for each completed year of continuous service subject to a maximum of 15 months basic wages.                            |
| (4) On voluntary retirement after 10 years.  | Half a month's basic wages for each completed year of service but not exceeding 15 months basic wages.   |

The salary for the purpose of calculating gratuity shall be the average salary exclusive of allowances during the twelve months next previous to death, retirement or termination of service as the case may be."

89. Before proceeding further it may be stated that under the Calcutta agreement of 20th July, 1959, the management agreed to grant its employees at Calcutta and its other branches throughout India, the following improved Scheme of gratuity:—

"It is agreed that the company shall substitute the following Scheme of gratuity for the existing scheme of gratuity:—

(1) In the event of death of an employee whilst in service of the company or on his physical or mental disability to continue further in service.

One month's basic salary or wages for each completed year of service subject to a maximum of 15 (fifteen) months basic salary or wage to be paid to the disabled employee or if he is dead to his heirs, executors, legal representatives or assignees.

(2) In the event of voluntary retirement or resignation of an employee after 10 years service.

Three weeks basic salary or wages for such completed year of service but not exceeding 15 months basic salary or wage.

(3) In the event of termination of the service by the employer.

Half month's basic wages for each completed year of service till 10 years continuous service and three weeks basic wages for each completed year of service beyond 10 years continuous service but not exceeding 15 months basic salary or wages. In the event of dismissal for gross misconduct involving financial loss to the company the amount of gratuity payable shall be reduced by the amount of financial loss caused to the company by the misconduct resulting in the termination of service.

The salary or wages for the purpose of calculating gratuity shall be the average basic salary of wage exclusive of dearness and other allowances, to which the employee was entitled during the 12 months, immediately prior to the occurrence of the event entitling the workmen for the payment of gratuity."

90. Shri Sule for the workmen at the hearing offered to accept this scheme of gratuity for the Bombay employees.

91. But Shri L. C. Joshi for the management has opposed the grant of the Scheme of gratuity under the Calcutta agreement to the Bombay employees on the ground that the demand under reference was according to him confined to a claim for gratuity only in the events of voluntary retirement or resignation and he has on that basis argued that the workmen at Bombay should only be awarded the benefit of the Calcutta agreement on gratuity only as far as it relates to the two events of voluntary retirement or resignation. This is not actually correct. The Calcutta agreement covers the payment of gratuity in the events of (1) death of an employee whilst in the service of the company or on his physical or mental disability to continue further in service, (2) in the event of voluntary retirement or resignation of an employee after 10 years service and (3) in the event of termination of service by the company. Now, a scrutiny of the demand under reference shows that all these events are covered by the Union's demand. The demand for gratuity in the event of voluntary retirement or resignation is referred to in clause (a) of the Union's demand and the payment of gratuity in the events of death and permanent physical or mental disability and in the event of termination of the service by the employer is referred to in clause (c) of the demand. The union's demand may not have been very artistically worded, but it does cover all the events under which gratuity is made payable under the Calcutta agreement.

92. I am satisfied that improvement in the existing scheme of gratuity in terms of the Calcutta agreement is justified, and that the opposition of the management to extending that benefit to its Bombay employees is unjustified. I, therefore, award that the Scheme of Gratuity as contained in the agreement dated 20th July, 1959 between the company and its Calcutta employees shall also apply to the Bombay Branch and I award accordingly and further direct that the present scheme of gratuity shall be substituted by that Scheme.

*Demand No. 15.*

Free and full medical aid scheme including examination by consultants etc. shall be provided for all the employees of the Society and their families.

93. The demand is for the introduction of a Scheme of Free Medical aid, and in support it is urged that most of the commercial and insurance companies in Bombay grant free medical aid to their workmen consisting of free supply of medicines (mixtures and patent medicines), injections, etc.

94. The management by its written statement has opposed the demand.

95. A similar demand made by the Calcutta employees was not pressed. The union at the hearing has filed a list of 11 insurance companies (Exhibit W-L) which grant some kind of free medical aid to their workmen, but the exact extent and nature of the medical aid granted is not stated. The union has also not given details of the Scheme of Medical Aid which it wants the company to provide. Considering that the company is not earning any large profits, the demand at this juncture does not appear to be justified and the same is therefore rejected.

*Demand No. 16.*

Retrospective effect as regards demand Nos. 1, 4, 6 and 7 shall be given from 1st January, 1957.

96. I have in my award under demand Nos. 1, 4, 6 and 7 indicated the dates from which they shall come into force. The demand for granting those demands with retrospective effect from 1st January, 1957 appears to me to be unjustified for reasons indicated by me earlier.

*Demand No. 17: Victimisation.*

No employee should be victimised or ill-treated for his Trade Union activities. No employee shall be debarred from any public activity.

97. The union in its written statement has made some general statements. Its specific case appears to be that Shri K. S. B. Pillai who is the General Secretary of the Union of insurance employees in Bombay is denied the facility of using the office telephone and telephone messages received for him are not allowed to be received by him. The management's case is that it objects to its office telephone being used for the general trade union activities of any of its employees. The management has stated that the allegations made by the Union in its written statement are not warranted or justified because the management recognises the Union. It has denied that it seeks to victimise any of its employees for its trade union activities. The matter was not carried at the hearing beyond these affirmations and denials and no evidence was led by the union. Besides, it is impossible to adjudicate on a demand couched in such general terms. No directions can therefore be given. The right to legitimate trade union and public activity is the right guaranteed by the Constitution of India and it does not require reaffirmation by any award.

*Demand No. 18: T.A. and D.A. Rules.*

The present T.A. and D.A. Rules of the Society which are antiquated should be scrapped and in its place a properly thought out and prepared sets of rules should be introduced in consultation with the union taking into consideration the present day cost of travel and living expenses.

The salient features of the rules should be among other things as follows:—

Basic pay of those travelling	Class of Travel	Daily Allowance
Upto Rs. 100/-	Inter class and if not available third class.	Rs. 8/-
From 100/- to Rs. 450/-	2nd Class and if same not available 1st Class.	Rs. 12/-
All Head Clerks.	1st Class.	Rs. 15/-

98. At present the Bombay office pays its subordinate staff sent on tour, 3rd class fare and a daily allowance of Rs. 1-8-0 per day. Rarely is a clerk asked to go out of Bombay and when he is sent out he is given 3rd class fare and daily

allowance of Rs. 4-2-0. Under the Calcutta agreement the management agreed to the following rates of travelling and daily allowance:—

**"7. Travelling Allowance and Daily Allowance.**

It is agreed that when on duty the staff shall be paid Travelling Allowance and Daily Allowance at the following rates:—

- (a) sub-staff.—Third class train fare plus Rs. 3 (three) as daily allowance for each day he is out of station.
- (b) Clerical staff.—With basic salary upto Rs. 250, second class train fare plus daily allowance of Rs. 7 (seven) per day.

For basic salary above Rs. 250 First Class train fare plus daily allowance of Rs. 10 per day.

It is further agreed that for visits to Calcutta, Bombay, Delhi and Madras the daily allowance shall be 25 per cent more than the rates prescribed above."

99. But the management to my mind unreasonably objects to these rates being provided for the Bombay employees. The utmost it would go is to offer 2nd class Railway fare to the clerical staff. After hearing the submissions of the parties I am satisfied that the rates agreed to in Calcutta are fair and should be awarded to the Bombay employees and I award the same.

**Demand No. 19: Transfer.**

(i) no employee of the Society should be transferred from Bombay office to any other Branch or Head Office without his willingness in writing and the transferred employee should be paid an increase of 50 per cent of their basic pay for a temporary transfer and 45 per cent for a permanent transfer with a proviso that he would be re-transferred to Bombay Office in the event of a closure of the Branch to which he has been transferred. The same rule shall apply in case of transferred employee having been found to be unsuitable for any reason at that Branch or Head Office.

(ii) Shri J. M. Panakal who is under orders of transfer shall be paid an increase of 45 per cent in his basic salary and all his expenses for shifting his moveable property. He should also be guaranteed to be re-transferred to Bombay office in the event of a closure of Jaipur office or on his being found not suitable for Jaipur office. The terms and conditions of service of the Bombay Office should apply in case of Mr. Panakal during his tenure of office at Jaipur Branch.

100. The second part of the demand relating to Shri J. M. Panakal was dropped at the hearing, the parties stating that that issue had been settled amicably between them.

101. The union in its written statement of claim has stated that demand No. (1) has been made on account of the misuse of the provisions of transfer by the employer. It has in this connection referred to the provisions contained in the Banks' Award (Shastri Award) with regard to transfers. It claims that an employee's consent should be first obtained to his transfer and that certain definite rules should be prescribed even in the event of accepted transfers. It is further prayed that the company should be disallowed from transferring any official of the Union without his consent.

102. The company in its written statement has stated that the services of its employees are transferable from one office to another and the Society does not want that right to be curtailed.

103. At the hearing the Union prayed that an award should be made directing the management to follow the directions regarding transfer contained in the Banks' Award (Shastri Award).

104. Shri Joshi for the company at the hearing referred to the decision of the Labour Appellate Tribunal in the case of the Standard Vacuum Oil Co. Ltd. (1954-II.L.L.J. p. 355). But the decision really deals with the question whether colourable exercise of the right of transfer of a workmen gives the right to the latter to raise an industrial dispute or to file a complaint under Section 33A of the Act. That decision does not lay down specific rules governing the transfer of an employee from one branch to the other, as are contained in the Shastri Award. Shri Joshi has also argued that almost a similar demand regarding transfer was not pressed by its Calcutta employees under the Calcutta agreement and he has argued that it would lead to disharmony if in this dispute some rules regarding

transfer were to be framed. I am not impressed by this argument. After hearing the submissions of the parties I am satisfied that some rules governing the transfer of an employee of the Bombay Branch to some other Branch are justified.

105. I have considered the direction contained in Chapter XXVIII at Paras 535, 536 and 537 of the Shastri Award and I think that they can well govern the question of transfers in this branch also. I, therefore, direct that on questions of transfer, with regard to the points covered by demand No. 19(i), the directions contained in paras 535, 536 and 537 of the Shastri Tribunal's award (The Gazette of India, Extraordinary, Part II Section 3 dated 20th April, 1953 at page 1319) shall be followed. Anything claimed under demand No. 19(i) in excess of what the Shastri Award has directed is rejected.

*Demand No. 20: General.*

Nothing contained in this chapter shall adversely affect or take away from any employee or group of employees any rights, privileges or usages, practices or conventions, amenities or other conditions of service that are already vested in or enjoyed by such employees or group of employees.

100. This demand is intended to safeguard the existing interests, rights, privileges, amenities, advantages etc. of the employees. The company in its written statement has stated that the demand cannot be adjudicated upon as it is in vague terms. Whilst claiming the right to alter existing rights and privileges if justified, the company has conceded that the union will have the liberty in such circumstances to raise disputes in specific cases and to have them settled by proper constitutional methods.

107. On a similar demand in my award in the Triton Insurance Company's dispute I held that it is not possible to give any definite award or directions. The inability of the Tribunal to make an award would not however, in any way adversely affect the right to existing benefits privileges and rights to which the workmen are entitled.

*Demand No. 21.*

No employee shall be adversely affected by the implementation of these demands if his service conditions in any respect would be higher than the effect of the demand.

All the demands set forth hereinabove shall be implemented with effect from 1st January, 1957 unless otherwise specifically stated.

108. By the first part of this demand the Union seeks to safeguard their interests which should not be adversely affected by the implementation of this Award.

109. The management has raised the same contention on this demand as on the previous demand i.e. demand No. 20.

110. In my opinion this demand should be granted as it can never be the intention of any Award of an Industrial Tribunal to adversely affect the existing conditions on any of the subject matters covered by the reference, if they are better than what they would stand to get under the terms of the Award. For instance if any workmen is drawing a higher salary than he would be entitled to under the terms of the Award that salary would be protected. Similarly, with regard to the other demands. I, therefore, grant the protection sought by this demand.

111. With regard to the demand that all demands should be granted with retrospective effect from 1st January, 1957 I have indicated in my award on each demand the date from which the benefit of my directions on the demand should be granted. With respect of those demands in which no specific date is mentioned in the direction given by me. I direct that they shall be granted with effect from 1st January, 1959 and in fixing this date I have borne in mind the Calcutta agreement.

112. As the Union has substantially succeeded on the major demands, I think an order for costs to it would be justified and I order the company to pay the Union Rs. 150 as costs.

(Sd.) SALIM M. MERCHANT, Presiding Officer,  
Central Government Industrial Tribunal, Dhanbad.

Dhanbad,  
The 14th November, 1959.



## ORDERS

*New Delhi, the 20th November 1959*

**S.O. 2640.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Hindustan Commercial Bank Limited, Kanpur and their workmen in respect of the matter specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Delhi, constituted under section 7A of the said Act.

### SCHEDULE.

Whether Shri L. N. Chowdhry, who retired from the service of the Hindustan Commercial Bank Limited, Kanpur, as an Assistant Accountant during December, 1954, was a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947, as it then stood, and, if so, whether he is entitled to payment of gratuity under the Award of the All India Industrial Tribunal (Bank Disputes) constituted by the notification of the Government of India in the Ministry of Labour No. S. R. O. 35, dated the 5th January, 1952, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955)?

[No. LRII-10(90)/59.]

**S.O. 2641.**—Whereas the Central Government is of opinion that an industrial dispute exists between Shri B. B. Sarkar, Tramming Contractor, Bhutgoria Colliery and his workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

### SCHEDULE.

What should be the wage structure and designation of Sarvashri K. P. Bhattacharjee, Rathu Napit, Nildhari, Deo Kishan, Rampat Sirkar, R. L. Tiwari and Narain Mitra, working under Shri B. B. Sarkar, Tramming Contractor of Bhutgoria Colliery, keeping in view the Award of the All India Industrial Tribunal (Colliery Disputes), as modified by the decision of the Labour Appellate Tribunal on appeals against the said Award?

[No. F. LRII-2(160)/59.]

P. R. NAYAR, Under Secy.

*New Delhi, the 19th November 1959*

**S.O. 2642.**—In pursuance of clause (c) of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby nominates Shri P. C. Jayachandran, Administrative Officer, Associated Cement Companies Limited, Kymore, as a member of the Regional Committee for Madhya Pradesh vice Shri P. B. Adur who has resigned, and makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. S. O. 2427, dated the 8th November 1958, namely:—

In the said notification, for entry (5), the following entry shall be substituted, namely:—

"(5) Shri P. C. Jayachandran, Administrative Officer, Associated Cement Companies Ltd., Kymore".

[No. PF. II-45(17)/57.]

*New Delhi, the 24th November 1959*

**S.O. 2643.**—The following draft of a further amendment of the Calcutta Unregistered Dock Workers (Regulation of Employment) Scheme, 1957, which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), is published as required by the said sub-section for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 26th December, 1959.

Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be taken into consideration by the Central Government.

*Draft Amendment*

In the said Scheme, in item (2) of the Schedule, the words, "except those employed by contractors appointed by the Ministry of Food and Agriculture for clearance of imported foodgrains" shall be omitted.

[No. Fac. 184(13)/59.]

P. D. GAIHA, Under Secy.

*New Delhi, the 24th November 1959*

**S.O. 2644.**—In exercise of the powers conferred by section 10 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947), the Central Government hereby makes the following further amendments in the Coal Mines Labour Welfare Fund Rules, 1949, the same having been previously published as required by sub-section (1) of the said section, namely:—

In the said Rules, in sub-rule (1) of rule 26,

- (1) the word "and" at the end of clause (d) shall be omitted;
- (2) the word "and" shall be inserted at the end of clause (e);
- (3) after clause (e), the following clause shall be inserted, namely:—

"(f) that an audited statement of accounts together with a certificate of a registered accountant or other recognized body of auditors to the effect that the accounts are correct is furnished by the grantee."

[No. M-II-1(8)/59.]

A. P. VEERA RAGHAVAN, Under Secy.

*New Delhi, the 28th November 1959*

**S.O. 2645.**—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 29th November, 1959 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force), Chapter V and Chapter VI (except sub-section (1) of section 76 and sections 77, 78, 79 and 81, which have already been brought into force) of the said Act shall come into force in the following areas of the State of Punjab, namely:—

The areas within the revenue villages of Lel, Fateh Nangal, Dhariwal, Rania and Dadwan bearing Had Bast Nos. 386, 387, 388, 389 and 394 respectively in the district of Gurdaspur.

[No. F. HI-13(19)/59.]

BALWANT SINGH, Under Secy.

**ORDER.**

*New Delhi, the 20th November 1959*

**S.O. 2646.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Martin's Light Railways,

Calcutta and their workmen regarding the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

**SCHEDULE.**

1. Scales/grades of pay and fitting into the grades.
2. Dearness Allowance.
3. Quarter or House Rent Allowance.

[No. LRIV. 3(29)/59.]

**A. L. HANDA**, Under Secy.

